The Year's Top Education Cases

ConnCASE 2021

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Agenda

- IDEA
  - Free Appropriate Public Education (FAPE)
  - Child Find, Evaluations, & Eligibility
  - IEP Development & Implementation
  - Least Restrictive Environment (LRE)
  - Behavior and FBAs/BIPs
  - Procedural Safeguards & Parental Participation
  - Private School/Residential Placement
- Section 504, ADA, & Other Related Laws
- Retaliation

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Free Appropriate Public Education (FAPE)

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Free Appropriate Public Education

- What is a free appropriate public education (FAPE)?
  - *Rowley Standard:* For a student who is fully integrated into the regular education setting, the student's IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley,* 553 IDELR 656 (U.S. 1982).
  - *Endrew F. Standard:* For a student who is not fully integrated into the regular education setting, the student's IEP should be "appropriately ambitious" and give the student a "chance to meet challenging objectives" – goals must be "appropriately ambitious in light of [the child's] circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1,* 69 IDELR 174 (U.S. 2017).

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FAPE Under *Endrew F.*

- **Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174, 137 S.Ct. 988 (2017).**
  - A school must offer an IEP that is reasonably calculated to enable a child to make progress "appropriate in light of the child's circumstances."
  - When a child is "fully integrated" into a regular classroom, providing FAPE that meets the unique needs of a child with a disability typically means providing a level of instruction reasonably calculated to permit advancement through the general curriculum (*Rowley* Standard)
  - If progressing smoothly through the general curriculum is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement, but must be "appropriately ambitious in light of his circumstances."
  - This standard is markedly more demanding than a 'merely more than de minimis' test for educational benefit.

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Fully Integrated: Analyzing Endrew F. and Rowley

- **Capistrano Unified Sch. Dist. v. S.W., 77 IDELR 137 (D. Cal. Aug. 19, 2020).**
  - The student argued that she was not "fully integrated because she was pulled out of the classroom for 17% of her total classroom time for SAI and speech services; distinguishing herself from "*Rowley*.
    - The IEP in *Rowley* required the student to receive instruction in a regular classroom using a hearing aid and receive instruction from a tutor one hour each day and from a speech therapist three hours each week but did not provide details on when the student was "pulled out").
  - Here, the Court noted that the student was "part of generalized education but was to be pulled out of class for an hour a day for SAI and an additional 30 minutes twice a week for speech therapy."

Cont.

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Fully Integrated: Analyzing Endrew F. and Rowley

- **Capistrano Unified Sch. Dist. v. S.W., 77 IDELR 137 (D. Cal. Aug. 19, 2020), Cont.**
  - The Court explained, "[w]hile *Rowley*, *Endrew F.*, and the IDEA do not define what constitutes a 'fully integrated' student, the Court interprets the term in its plain meaning." The Court noted that Merriam-Webster's defines:
    - "Integrated" as characterized by integration which in term is defined as the "incorporation as equals into society."
    - "Fully" is defined as "in a full manner or degree" or "completely."

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Fully Integrated: Analyzing Endrew F. and Rowley

- **Capistrano Unified Sch. Dist. v. S.W., 77 IDELR 137 (D. Cal. Aug. 19, 2020), Cont.**
  - The Court held the student here "was not completely a part of her class given that she was removed from the class daily for IEP and several times a week for speech therapy," and therefore, "was not 'fully integrated.'"
    - Therefore, the appropriate standard "is that of a non-fully integrated student, in other words that the IEP was 'reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.'"
  - The Court found that the "ALJ applied the appropriate standard by citing and considering both *Endrew F.* and *Rowley* and weighing whether the plan was reasonably calculated to make progress in light of the student's circumstances

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Appropriate in Light of Student's Unique Circumstances Does Not Mean Maximum Potential

- **A.A. ex rel. K.K. v. Northside Indep. Sch. Dist., 120 LRP 9212 (5th Circ. March 6, 2020).**
  - Here, the parent filed suit against the district alleging denial of FAPE due to academic regression.
  - However, the Court noted that the IEP team appropriately revised the student's IEP goals to account for progress and the student made progress in fine motor skills.
  - The Court explained that the standard is not to provide opportunity for maximum potential or to "insulate a child from experiencing hardships."
  - The Court noted that despite being absent 46 days in one school year, the student made notable gains academically and socially.
  - Thus, the Court found that the district took the necessary steps to ensure the students success and upheld the District Court's finding that student's progress was appropriate in light of his circumstances.

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The IDEA Focuses on Progress Rather than Comparative Performance

- **William V. ex rel. W.V. v. Copperas Cove Indep. Sch. Dist., 77 IDELR 92 (5th Cir. 2020).**
  - Where a student with dyslexia showed educational progress, despite parent's contention that the district denied FAPE, the Fifth Circuit explained that the "IDEA focuses on individual progress, and not how a student's performance compares to that of same-age peers."
  - The Circuit Court noted that the child was continuously progressing in the general education setting, particularly in reading, writing, and math.
  - Thus, the Court held that "because the child did not lose any educational opportunities as a result of the flawed eligibility determination, the parents could not establish a denial of FAPE."

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No Liability for Procedural Violations that were Harmless

- **Butte Sch. Dist. No. 1 v. C.S. by McCarvel., 76 IDELR 204 (9th Circ. 2020).**
  - The Circuit Court found that the district committed a procedural error by failing to conduct transition assessment prior to developing a postsecondary transition plan.
    - The district also erred when it failed to seek a disability representative once the student turned 18 years old.
  - However, the district did not violate the IDEA when it failed to evaluate the student for SLDs because the parent denied consent.
  - Additionally, the district had no obligation to conduct an FBA because the student was not removed from his placement due to behavioral issues.
    - The Circuit Court noted that there was plenty of evidence to show that the IEP team considered the student's problem behaviors and took appropriate steps to correct them.
  - Finally, the Circuit Court concluded that because the district provided appropriate transition services and proper parent involvement, the violations the district committed were harmless.

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Failure to Offer Comp. Ed. Resulted in Costly Award

- **Butler v. District of Columbia, 77 IDELR 16 (D.C. July 15, 2020).**
  - Here, the Court found that the student "suffered serious educational harms due to consecutive FAPE violations and lack of compensatory education" over two school years.
  - As a result the Court "awarded the student 1,100 hours of specialized instruction, 88 hours of occupational therapy, 100 hours of adapted physical education, and 132 hours of orientation and mobility support services."
  - The Court explained that courts have broad discretion in remedying IDEA violations and "a compensatory education award must undo the FAPE denial's affirmative harm [and] compensate for lost progress."

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Student's Entitlement to Comp. Ed. Reduced by Withdrawal

- **R.S. by Soltes v. Board of Dirs. of Woods Charter Sch. Co., 76 IDELR 205 (4th Circ. May 27, 2020).**
  - Here, despite the district's failure to provide FAPE for 1 year, it was not required to pay comp. ed. for time that parents unilaterally homeschooled student after that year.
  - There was no evidence to suggest that the parents attempted to reenroll the student in any type of public or charter school.
  - Thus, the Circuit Court affirmed the District Courts judgment requiring the district to pay for 15 hours per week of private compensatory services until the end of the 2019-20 school year (for the year it denied FAPE).

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District was Obligated to Offer FAPE for Student Enrolled out of District

- **Bellflower Unified Sch. Dist. v. Lua ex rel. K.L., 120 LRP 32822 (9th Circ. Oct. 26, 2020) (unpublished).**
  - The district refused to develop a new IEP for the student because she attended a parochial school outside of the district.
  - The Circuit Court explained that a district has an obligation to provide a FAPE to all resident students with a disability despite the student's enrollment in an out-of-district private school.
  - The Court further explained that because the student lived in the district, the district remained obligated to revaluate the student and provide the necessary special education services.
  - The Circuit Court held that the district violated the IDEA by failing to make FAPE available and held parents were entitled to reimbursement for the private placement.

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Court looks to More than Assessments to Determine Receipt of FAPE

- **S.M. v. District of Columbia, 120 LRP 38714 (D.D.C. Dec. 8, 2020).**
  - Parents argued that the IEP developed by the district did not provide sufficient special education services for S.M., which denied her a FAPE.
  - The Court upheld the hearing officer's decision that the district offered S.M. a FAPE finding it was reasonable for the hearing officer to conclude that the IEP progress reports and testimony regarding progress outweighed S.M.'s limited progress on the standardized tests, due to the limited data available at the time.

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A District's 17-day Delay Amounted to Denial of FAPE

- **Glass ex rel. A.G. v. District of Columbia, 120 LRP 36645 (D.D.C. Nov. 19, 2020).**
  - Student transferred in from out-of-state, and district was informed of her disabilities and existing IEP.
  - The district failed to provide her comparable services or implement its IEP until two weeks later.
  - Parent argued that the delay denied her daughter FAPE, as well as the district's decision to change her eligibility category under the IDEA from Autism to Emotional Disturbance.
  - The Court concluded that the district's delay amount to a denial of a FAPE, but held that the district appropriately determined eligibility under the emotional disturbance category.

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Parent was Permitted to Introduce a Subsequent IEP to prove Denial of FAPE

- **Mr. F. v. MSAD 35, 120 LRP 34287 (D.C. Me. Nov. 6, 2020).**
  - The Court held that "a subsequent IEP is potentially relevant to the Court's consideration of the appropriateness of a prior educational plan."
  - The Court explained, "[l]ogic suggests that the temporal relationship between the subsequent information and the challenged plan is of some consequence in assessing the probative value of the subsequent evidence."
  - The Court further explained that "with time, a minor child's needs might change and more information that could inform the development of an appropriate educational plan would likely become available."
  - The Court permitted the parent to supplement the record as requested in regard to the subsequent IEP.

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Child Find, Evaluations, & Eligibility

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Delay in Evaluating Student for SLD Denied FAPE

- **D.C., et al. v. Klein Independent School District, 76 IDELR 208 (S.D. Texas, May 29, 2020).**
  - The District Court held that the district unreasonably delayed the student's evaluation for several months, until the parents requested an evaluation, despite its knowledge of his severe difficulties in reading comprehension.
  - The Court explained, "[i]f the district has reason to suspect that a student needs special education due to a disability, it should immediately initiate the evaluation process.
  - The Court also noted that the district had reason to suspect a disability and the need for services because "the student's reading skills did not sufficiently improve throughout the year even though he received intensive supports and accommodations under a Section 504 plan"

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District did not Violate Child Find when it Took Meaningful Steps

- **Northfield City Board of Education v. K.S. on behalf of L.S., 76 IDELR 255 (D.C. New Jersey, June 3, 2020)**
  - Once the student "displayed suicide ideation and engaged in self-harm, the district took steps to evaluate her mental health and provided her counseling services, but did not immediately evaluate her for special education eligibility."
  - The parent filed a due process complaint asserting that the district violated its Child Find obligation by delaying an evaluation.
  - The District Court held that the school district did not violate its Child Find obligations because it took continuous and "meaningful steps" to address a student's needs prior to evaluating her for special education services.

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99-day Delay Violated Child Find

- **Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W., 961 F.3d 781 (5th Cir. 2020).**
  - The 5th Circuit held that the district erred in waiting 99 days to refer a student for an IDEA evaluation, thus violating its child find obligation.
  - The Court provided guidance stating that "the frequency and severity of a student's behaviors can be important factors when determining whether a delay in the IDEA referral process was reasonable."
  - The Court concluded that where a district appropriately and within its discretion attempts to address a student's behaviors prove ineffective, such ineffectiveness should prompt the district to evaluate more quickly than it might typically evaluate.

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Reevaluations of Homeschooled Student

- **M.C. v. School District of Philadelphia, 77 IDELR 69 (E.D. Penn. Aug. 20, 2020**).
  - The parent of a homeschooled teenager with disabilities, who failed to request a reevaluation of her son could not rely on a certified letter from her attorney to show that the district's reevaluation of her son was untimely.
  - The District Court upheld that the district's reevaluation was timely due to the districts "detailed records of all communications with parents" which proved parent only requested a meeting rather than a reevaluation.

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Dyslexia Evaluation Found Timely

- **Amanda P. and Casey P. ex rel. T.P. v. Copperas Cove Sch. Dist., 76 IDELR 154 (W.D. Tex. April 14, 2020).**
  - Here, parent filed suit alleging the district unreasonably delayed her son's evaluation for dyslexia resulting in denial of a FAPE.
  - The district argued that the four-month delay between the request and evaluation was a result of it following its timelines and procedures for dyslexia evaluations, which the District Court found to be a reasonable delay under the circumstances.
    - The districts policy required it to conduct a screening before convening an IEP meeting to determine the need for the dyslexia evaluation.
  - Despite the entire process extending over the course of nearly eight months, the District Court noted that the district did find the student eligible and the delay was reasonable based on a totality of the circumstances and affirmed the IHO's decision.

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Evaluation Lacked Observation Required for SLD Evaluation

- **Cynthia K. v. Portsmouth Sch. Dep't., 76 IDELR 278 (D. N.H. July 9, 2020).**
  - The district arranged for a behavioral expert to observe the child in class during his kindergarten year as part of functional behavioral assessment.
    - However, the Court noted that the behavioral expert's observation did not address the child's academic performance and the judge observed, the classroom teacher's routine observations of the child while providing instruction to the entire class did not qualify as an observation for purposes of the regulations.
  - The District Court found against the district explaining that any initial evaluation of a student suspected of having an SLD must include an observation of the student's academic performance during routine classroom instruction.

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Evaluation Failed to Address Individual Needs

- **D.B. v. Bedford County Sch. Bd., 110 LRP 24386 (W.D. Va. April 23, 2010).**
  - A student who was placed in inclusion for four consecutive years and failed to achieve goals was denied FAPE due to the districts flawed evaluation and IEP that did not target his needs.
  - The Court held that there was evidence to "strongly suggest that the student had [SLD]" but the district failed to even discuss SLD and his services "may have changed had he been fully evaluated."
  - Because "the IEP could not accurately be described as based on [the student's] 'individual' needs if he were evaluated on the basis of a mistaken comparison," the Court ordered the district to reimburse the part for private school tuition.

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No Violation Where Parent Significantly Limited Ability to Evaluate

- **Dougall ex rel. A.D. v. Copley-Fairlawn City Sch. Dist. Bd. of Educ., 120 LRP 3077 (N.D. Ohio Jan. 28, 2020).**
  - The Court found that "the parent's restrictions on the type of information the district could gather justified the district's termination of the evaluation."
  - The Court explained that evaluation under the IDEA requires the IEP "team must review existing data…to identify what additional data, if any, the team needs to determine eligibility."
  - The Court stated that "the parent's action and attempts to exert complete control over the evaluation process prevented the district from properly conducting the evaluation, and, thereby, amounted to a revocation of consent to the evaluation itself."
  - For these reason the Court held the district had no reason to suspect a need for special education and, thus, did not violate child find.

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Evaluation Timely where Parent Withheld Consent

- **M.B. v. Springfield School District No. 19, 77 IDELR 129 (D. Or. Sept. 23, 2020).**
  - On May 29, 2018, when the District convened an IEP and evaluation plan meeting, Parent requested an evaluation of Student under the eligibility category of Emotional Disturbance ("ED").
  - The meeting continued on June 13, 2018, where the District presented a detailed evaluation plan under the eligibility category of ED.
  - Parent indicated that she would withhold her consent to evaluate Student under the category of ED
  - The Court acknowledged that the parent withheld consent for the evaluation until September 2018 despite the district's willingness to evaluate the student over the summer break.
  - Thus, the Court ruled the evaluation was timely "because the district completed that evaluation within the IDEA's 60-day time frame" and found the evaluation to be appropriate "based on the information reasonably available to the parties."

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Flawed Eligibility Determination Did Not Deny FAPE

- **William V. ex rel. W.V. v. Copperas Cove Indep. Sch. Dist., 77 IDELR 92 (5th Cir. 2020).**
  - Where a student with dyslexia showed educational progress, despite parent's contention that the district denied FAPE, the Fifth Circuit explained that the "IDEA focuses on individual progress, and not how a student's performance compares to that of same-age peers."
  - The Circuit Court noted that the child was continuously progressing in the general education setting, particularly in reading, writing, and math.
  - Thus, the Court held that "because the child did not lose any educational opportunities as a result of the flawed eligibility determination, the parents could not establish a denial of FAPE."

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Student's Performance Alone is Not Enough to Deny Eligibility

- **Department of Educ., State of Hawaii v. Acen T. by Wayne and Leeann T., 76 IDELR 121 (D.C. Haw. April 6, 2020).**
  - The District Court explained that just because a student with disabilities performs academically well in an inclusion classroom does not mean he should be disqualified from continued IDEA eligibility.
  - In addition to the typical considerations under the IDEA, districts must also consider the effect of the special education and related services on the student's ability to perform.
  - Thus, the District Court affirmed that the district improperly exited the student from special education.

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District Erred in Finding the Student Ineligible for IDEA Services

- **Indep. Sch. Dist. No. 283 v. E.M.D.H., 960 F.3d 1073 (8th Cir. 2020)**
  - The 8th Circuit held that a district erred in finding the student ineligible for IDEA services based on her above-average academic performance because her anxiety and depression prevented her from accessing the general education curriculum.
  - Here, the eligibility team only considered the student's academic ability when determining her need for specialized instruction.
  - The Court explained that the "team also needs to consider factors such as frequent absences" and the reason for such absences, as well as the student's ability to access the general education curriculum, which may be evidenced by the number of course credits earned.

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District Properly Considered IEE in Determining IDEA Eligibility

- **J.M. and E.M. ex rel. C.M. v. Summit City Bd. of Educ., 120 LRP 32983 (D.C. N.J., Oct. 27, 2020)**
  - The parent provided the district with an IEE showing the student exhibited behaviors that were "suggestive" of ADHD and autism.
  - The district considered the IEE as well as the results of its own assessments and data and found the student not eligible.
  - The parent then presented a diagnosis of autism from a private practitioner, which the district responded by developing and IEP for the student.
  - The District Court upheld the ALJ's decision that the district reasonably determined the student was not eligible for special education under the IDEA because a later classification does not make a districts previous determination inadequate.

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IEE Triggers Child Find Obligation

- **Knox ex rel. J.D. v. St. Louis City School District, 76 IDELR 286 (E.D. Missouri, June 30, 2020)**
  - KG student engaged in disruptive behaviors and suspended numerous times.
    - Throwing chairs, punching students in face, throwing rocks, urinated in stairwell.
  - Student was diagnosed w/ ADHD and started medications, but the district waited to see response to meds before evaluating.
  - District held eligibility meeting a month later regarding SLD, ID, or ED. The district claimed to address OHI but failed to create any record of such.
  - The Court held that the district violated IDEA because it failed to evaluated for OHI Cont.,

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IEE Triggers Child Find Obligation

- **Knox ex rel. J.D. v. St. Louis City School District, 76 IDELR 286 (E.D. Missouri, June 30, 2020), Cont.**
  - The Court held that where a student has a history of disruptive behavior and poor academic performance, the district should have evaluated him once it received an IEE echoing those concerns.
  - The Court held that the district violated the IDEA's child find requirement by waiting months to reconsider the student's eligibility for special education and related services.
  - The Court explained that districts should have a process for ensuring they promptly review an IEE report provided by a parent to determine whether the IEE triggers the need to evaluate or to revise an IEP.

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District Required to Fund IEE

- **Hopewell Twp. Bd. of Educ. v. C.B. ex rel. C.B, 77 IDELR 20 (D.C. N.J. July 30, 2020).**
  - The District Court upheld the ALJ's decision to order the district to pay for the parent's IEE.
  - The district argued that parent's request was untimely, which the District Court acknowledge the two-year delay, but explained that "neither the federal nor the state regulations governing IEEs set a time limit for disagreement."
  - Thus, the District Court held that because the district failed to file a due process complaint and because the disagreement over the evaluations triggered the parent's right to a publicly funded IEE, "the parent was entitled to such an IEE at public expense."

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Appropriate Evaluation Thwarts IEE Request

- **Smith ex rel. C.M. v. Tacoma Sch. Dist., 77 IDELR 48 (W.D. Wash. Aug. 3, 2020).**
  - A parent/guardian is not entitled to an IEE at public expense if the district shows its evaluation was appropriate.
    - A district must show it used a variety of assessment tools and strategies, reviewed existing evaluative data, and considered all areas of potential need.
  - Here, the Court found that the district's reevaluation met those requirements because it administered behavioral and occupational therapy assessments, sought input from the grandmother and school personnel, and observed the child in class; as well as reviewed existing evaluative data and considered whether the child needed services to address anxiety, sensory issues, fine motor deficits, or speech and language difficulties.
  - Despite the grandmother's challenge to the evaluation due to failure to assess cognitive functioning or defer to physician reports, the Court found no fault with the district's revaluation of the student.

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Despite Child Find Violation, Student was not Entitled Comp. Ed

- **P.P. v. Northwest Indep. Sch. Dist., 78 IDELR 7 (5th Cir., Dec. 14, 2020).**
  - Parent alleged district violated its child find duty from March to October 2016.
  - The district found the student eligible for special education services under the IDEA after completing evaluations, and his initial IEP was proposed and adopted on the same day, February 1, 2017.
  - A week later parents informed the district that they weren't happy with the IEP and requested an IEE, which was granted but wasn't completed until 2 months later.
    - In the interim, the district attempted to revise the IEP and address parent concerns, but parents refused to meet prior to IEE.
  - The Court held student was not entitled to comp. ed. for the district's child find violation because the parents impeded the districts efforts to correct any deficiencies and rejected the districts offer of remedial services.

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The IDEA Does Not Require a District to Evaluate Every Struggling Student

- **J.S. ex rel. B.S. v. Green Brook Twp. Pub. Sch. Dist., 120 LRP 37235 (D.C. N.J. Nov. 30, 2020).**
  - Plaintiffs asserted that the District failed to timely identify B.S. as eligible for special education services, and once they did, failed to offer him an IEP that delivered a FAPE.
  - Student was diagnosed with ADHD during first grade but did not receive special education or related services until his third-grade year.
  - After evaluations were completed in April of his third-grade year, the team determined that B.S. was eligible for special education and related services under the classification of OHI.
  - The Court upheld the ALJ's ruling that, "at all times, the District was responsive and acted appropriately, and met its child find obligations [as] set forth in the IDEA" and offered the student a FAPE.
  - The Court held that the district was responsive because upon recommendations made by B.S.'s doctors the district implemented a 504 Plan that included accommodations recommended by B.S.'s doctors; the district timely conducted evaluations once B.S. began to demonstrate a need for additional services; and upon parent's request the district conducted the requested evaluations and immediately implemented an IEP and set appropriate goals

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District did not Err in Waiting until Senior Year to Evaluate Student

- **Legris v. Capistrano Unified Sch. Dist., 120 LRP 38475 (C.D. Cal. Nov. 3, 2020).**
  - Parent argued that the district could have evaluated the student prior to her senior year for special education needs.
  - The Court noted that Student made average grades, and the fact that she had "a tutor for a difficult honors-level class, taken online without a teacher, does not establish that [Student] could not have done equally well in a general education classroom[,]" nor does it demonstrate a need for 1:1 instruction.
  - The Court upheld the ALJ's decision that the district did not violate the IDEA by finding the student ineligible for IDEA services.

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IEP Development & Implementation

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Trivial Progress Results in Payment of Private Placement

- **A.D. v. Creative Minds Int'l Pub. Charter Sch., 77 IDELR 163 (D.C. Sept. 28, 2020).**
  - The district reduced the student's specialized instruction in written expression by 30 minutes a week despite the students repeated failure to meet her IEP goals.
  - The Court found that the district failed to provide a FAPE because the IEP failed to include any goals relating to math and because it reduced her specialized instruction in written expression.
  - The Court order the district to reimburse the parents for the the student's unilateral placements.
  - The Court explained that "trivial progress is not enough to satisfy the IDEA's FAPE requirement" regarding the appropriateness of the IEP.

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Repeated IEP Goals with no Progress May Result in a Denial of FAPE

- **Preciado v. Board of Educ. of Clovis Mun. Schs., 120 LRP 9731 (D.C. N.M., March 11, 2020).**
  - The District Court found that the evidence showed that the district offered "extremely similar goals and recommendations" on the student's IEP for three years and the district failed to provide adequate instruction in reading and writing.
  - The Court also noted that the special education teacher incorrectly believed that simple repetition taught students how to read.
  - Finally, the District Court held that for those reasons coupled with the fact that the student made little progress in three years the district denied the student FAPE and upheld the IHO's decision ordering the district to pay compensatory education.

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IEP Failed to Enable Progress

- **Downingtown Area Sch. Dist. v. G.W., 76 IDELR 286 (E.D. Penn, Oct. 8, 2020).**
  - The District Court held that due to the "student's progress stagnating during the second half of the 2016-17 school year [and] his district's approach to addressing his needs" the district denied the student a FAPE.
  - The denial of FAPE was a result of "repeating many of his IEP goals, failing to substantially change his programming, and failing to reevaluate him before developing a new IEP," which was not "reasonably calculated to enable a child to make progress appropriate in light of his circumstances."
  - To avoid this type of suit, the IEP "team should have either changed the five goals it repeated, adjusted the student's programming to reverse his stagnation, or both, or at least explained in the IEP why it wasn't changing the goals."

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Material Implementation Failure?

- **Oskowis v. Arizona Dep't. of Educ., 76 IDELR 292 (D.C. Ariz., June 19, 2020).**
  - "A district must materially implement the services required by a student's IEP" to meet its FAPE obligation under the IDEA.
  - Here, "the court observed that the student's three most recent IEPs listed the special education teacher as the provider of special education services."
  - Parent argued that the use of a paraprofessional was a deviation from the IEP, but the Court noted that "the IEPs provided the paraprofessional would spend the majority of the school day with the student."
  - Thus, the District Court concluded that the IEP permitted the use of paraprofessionals to provide instruction and affirmed the ALJ's ruling dismissing parent's claim.

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Use of Methodology in IEP Resulted in District having to Defend Services

- **S.K. ex rel. Sh.K. v. City Sch. Dist. of the City of New York, 120 LRP 10112 (S.D. N.Y., March 13, 2020).**
  - During summer IEP meeting, the IEP team recommended the student be placed in a "12-month academic program in a specialized school."
  - The IEP goals adopted a conductive education methodology.
  - The district send a "School Location Letter" identifying the specialized school for the student.
  - The identified school did not have a trained conductor of "conductive education."
  - The parents unilaterally enrolled the child in another specialized school.
  - The Court noted that while "conductive education" uses a holistic approach to improving motor skills, those goals in the IEP overlapped with OT and PT goals.
  - The Court held that the district did not deny a FAPE despite its failure to offer "conductive education" because it did not require a trained conductor and it could meet her needs through OT and PT.

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District's Efforts to Build on Student's Success Resulted in a Favorable Ruling for the District

- **D.H. by K.H. and M.H. v. Fairfax County Sch. Bd., 121 LRP 2927 (E.D. Va., Jan. 19, 2021).**
  - Despite academic progress, Parents argued "D.H. was not making progress appropriate in light of his potential."
  - The Court found that the IEP team appropriately considered the most recent assessments and noted a concern regarding D.H.'s failure to pass his reading standards of learning ("SOL") from the previous year.
  - However, the August 2018 IEP addressed the student's deficits by including "additional service hours and additional goals in reading and behavior, among other areas."
  - Thus, the Court held that the IEP was reasonably calculated to provide FAPE.

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District's Failure to Develop an IEP Resulted in Tuition Reimbursement

- **C.D. by M.D. and P.D. v. Natick Pub. Sch. Dist., 120 LRP 40225 (D.C. Mass., Dec. 22, 2020).**
  - The Court upheld the Hearing Officer's finding, "that the services proposed for C.D. were appropriate to address her identified special learning needs, her demonstrated potential, her individual circumstances, and were reasonably calculated to ensure a meaningful educational benefit and make measurable educational progress."
  - However, the Court also upheld the Hearing Officer's award to the parents for tuition reimbursement, explaining that "the failure to schedule a Team meeting or propose an IEP [for the 2015-16 school year] was a sufficiently significant procedural violation, even in the absence of demonstrable educational harm, that it had the effect of denying C.D. a FAPE."

46

The way the District Wrote IEP Goals did Not Amount to a FAPE Denial

- **T.T. ex rel. C.T. v. Jefferson County Bd. of Educ., 120 LRP 36762 (N.D. Ala., Nov. 23, 2020).**
  - The parent claimed that the district failed to provide a FAPE due to "the way the IEP team wrote C.T.'s goals and benchmarks" and the "lack of ESY services."
  - The Court noted that the IEP team considered and decided against ESY because of his progress after he returned to school from spring break and based on teacher observations from the year.
  - The Court found in favor of the district stating, "[n]either the federal nor the Alabama regulations relating to ESY require a specific type of data on which the IEP team must base its decision."
  - The Court further found that while some goals were copied from the alternate achievement standards, the team individualized those goals in terms of success and accuracy rate.

47

Least Restrictive Environment (LRE)

48

More Restrictive Setting Appropriate

- **E.B. v. Baldwin Park Unified Sch. Dist., 77 IDELR 164 (C.D. Cal. Aug. 10, 2020)**
  - A district appropriately proposed a more restrictive placement (moderate/severe classroom) for a student with intellectual disabilities at least partially evidenced by the child's habit of "blowing raspberries" when classmates tried to interact with him and his inability or refusal to participate in most classroom activities in the mild/moderate classroom.
  - When defending against an alleged LRE violation, districts "should always try to draw on the teacher's input" because they "can testify concerning efforts to include the student in activities and the extent to which the student was able to participate and benefit."
  - The Court affirmed the ALJ's decision that "a moderate/severe special day class constituted the child's LRE" finding that "the student gained minimal academic and social benefit in his current classroom" and was negatively impacting his peers' learning.

49

Student did not Require Private School

- **Teters v. Peoria Unified Sch. Dist., 77 IDELR 162 (D.C. Ariz. Sept. 30, 2020).**
  - The District Court found that a district acted reasonably when it attempted "to accommodate a student with anxiety and ADHD who was overwhelmed by his large high school in a general education setting before considering a private school.
  - The District Court explained that the district provided a FAPE because it "offered a variety of accommodation and instructional methods to ease his anxiety and limit his exposure to large class sizes."
  - Ultimately, the District Court found in favor of the district because it acted reasonably and "the parent failed to show the student needed to be immediately placed in a private school to receive a FAPE."

50

District Found to have Mainstreamed Student to Max Extent Appropriate

- **Wishard ex rel. J.W. v. Waynesboro Area Sch. Dist., 77 IDELR 65 (M.D. Penn. Aug. 21, 2020).**
  - A fifth-grader made little progress in the general education setting despite extensive supports, modifications, and accommodations.
  - The district's recommendation that a student with autism receive most of his academic instruction in a special education classroom did not violate the IDEA.
  - The Court held "that this student could not receive a satisfactory education in the general education classroom," and that the district mainstreamed the student to the maximum extent appropriate.

51

Parent's Preferred Residential Placement was not the LRE

- **C.N. and M.N. ex rel. E.N v. Katonah Lewisboro Sch. Dist., 120 LRP 40227 (S.D. N.Y., Dec. 21, 2020).**
  - Parents asserted that District's proposed placement "was not appropriate to address EN's special education needs because it was not a residential therapeutic school like Grove," the parents preferred placement because it did not provide 24/7 coverage.
  - Parents sought reimbursement for "tuition, including all associated educational and clinical costs, room and board, and transportation for EN's attendance at The Grove School."
  - The Court noted that the District's proposed placement provided weekly individual and group counseling, the teachers and clinicians were experienced in addressing the needs of students with psychiatric disorders, and morning and evening supports supervised by a school psychologist.
  - The Court also noted that E.N. would be able to take elective classes like music, sports, theater, and art with non-disabled peers which is consistent with the LRE requirements.
  - The Court upheld the SRO's decision that a "therapeutic day program with before- and after-school supports provided a FAPE" in the student's LRE.

52

Parent's Lack of Participation May Undercut her Argument Against a Proposed Placement

- **J.D. by D.D.. v. Pennsylvania Virtual Charter Sch., 120 LRP 37000 (E.D. Penn. Nov. 30, 2020).**
  - Parent alleges that the proposed programming for the 2018-2019 school year was inappropriate and not the LRE pursuant to the IDEA and Section 504.
  - The Court noted parent's lack of participation in that she did "not visit[] the school and/or not make the student available for such a visit" and found it did not amount to a good-faith consideration.
    - Despite some miscommunication the Court found that parent's lack of participation "undercuts the parent's argument that the placement is inappropriate or that the placement was comprehensively considered by the parent, and by extension the IEP team."
  - While, the LEA failed to identify a specific school, the Court found it provided the appropriate notice of the proposed placement because the IDEA does not require the notice to included a specific placement.

53

Behavior & FBAs/BIPs

54

Interventions Must have a Meaningful Impact

- **Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W., 961 F.3d 781 (5th Cir. 2020).**
  - Noting that while a district may attempt interventions to address age-typical behaviors, the "Success Charts" a Texas district developed for a gifted fifth-grader diagnosed with oppositional defiant disorder had no meaningful impact on his disruptive, aggressive, and violent behaviors.
  - The 5th Circuit held that "[b]ased on the severity of [the student's] behavior, it was not reasonable to try intermediate measures to determine whether special education testing was appropriate for [him]."
  - Court found a child find delay from Oct. 8th to date of referral for sped evaluation on January 15th (99 days) despite eligibility for Section 504 on Oct. 8th

55

IEP must Appropriately Address Severe Behaviors

- **Enterprise City Bd. of Educ. v. S.S. and J.S. ex rel. S.S., 76 IDELR 295 (M.D. Ala. June 12, 2020).**
  - In this case the student "frequently presented dangerous behaviors -- including hitting, biting, pulling hair, pica, eloping, and self-harming behaviors -- that prevented his receipt of services.
  - The Court noted that "the student's behaviors escalated so much that his one-to-one aide requested assistance and subsequently resigned;" yet, the district still failed to incorporate any positive interventions in the IEP or develop a BIP.
  - The District Court held that the IEP failed to appropriately address the student's severe behaviors, which resulted in the student's regression in academic skills and behaviors over the course of two school years. Cont.

56

IEP must Appropriately Address Severe Behaviors

- **Enterprise City Bd. of Educ. v. S.S. and J.S. ex rel. S.S., 76 IDELR 295 (M.D. Ala. June 12, 2020), (Cont.).**
  - The district argued that "the IDEA only requires the development of a BIP when the district seeks to discipline the student."
    - The court noted that the district had disciplined the student by suspending him from the school bus due to his behaviors. The Court explained, "the IDEA requires the IEP team to consider behavioral interventions and strategies where the student's behaviors interfere with his learning or that of others."
  - To remedy this FAPE violation, the district was ordered to conduct a FBA, develop a BIP, assign a BCBA, and provide the student with counseling.

57

Aide's Actions Did Not "Shock the Conscious"

- **Clines v. Special Admin. Bd. Transitional Sch. Dist. of the City of St. Louis, 120 LRP 32834 (E.D. Mo. Oct. 9, 2020).**
  - An instructional aide caused the student to fall and break his arm when he reacted to the student's aggressive behavior.
    - The aide stepped out of the way to avoid the student's attempts at kicking him, which was consistent with the district's crisis management training.
  - The District Court found no evidence that the aide's actions were with malic or an intent to cause injury or harm.
  - The District Court explained that the parents needed to allege conduct so severe and inspired by malice that it "shocks the conscience," which the parents here were unable to do.

58

Behavior Supports Provided FAPE

- **Whitaker v. Board of Educ. for Prince George's County Pub. Schs., 77 IDELR 64 (D. Md. Aug. 25, 2020).**
  - The Court noted that "the positive behavioral interventions required by the BIP assisted the student with problem-solving and other behavior matters."
  - The Court held that the district appropriately requested consent to conduct an FBA for the purpose of revising the student's annual behavior goals.
  - The Court dismissed the parent's IDEA suit "because the IEP was reasonably tailored to the student's unique needs and enabled him to improve his academic performance and behaviors," the court held that the IEP offered him FAPE.

59

BIP is Component of IEP

- **B.D. by Davis v. District of Columbia, 77 IDELR 124 (D.C. Sept. 28, 2020).**
  - The Court acknowledged that "the student's Behavioral Intervention Plan, a component of his IEP, addressed many of the behavioral issues that the parents claim the IEP failed to address"
  - The Court explained that "a district has no obligation to provide every service, accommodation, or support that the parents of an IDEA-eligible student might request. If the district declines to include certain provisions in the student's IEP, however, it should be prepared to show the requested services were not educationally necessary."
  - The Court held the IEP addressed all of the student's identified needs and thus, the district undermined the parents' claim that it denied the student FAPE.

60

Lack of a BIP Did Not Render the IEP Fatally Flawed

- **Elizabeth B. by Donald B. and Aileen B. v. El Paso County Sch. Dist. 11, 120 LRP 39596 (10th Circ., Dec. 16, 2020).**
  - Parents "argue that the IEP failed to provide a FAPE because it did not incorporate a FBA and BIP."
  - The Court found that although Parents allege the student "exhibits 'maladaptive behaviors,'" they fail to show that these behaviors impeded her (or others') ability to learn.
  - The Court held that the parents failed to show the district was required to incorporate a FBA or BIP and explained that "IDEA only requires the School District to **consider** the use of positive behavioral interventions and supports."

61

District Failed to Adequately Address Behaviors

- **S.S. v. Board of Educ. of Harford County,120 LRP 32989 (D.C. Md., Oct. 27, 2020).**
  - The Court explained that a failure to conduct an FBA is not a denial of FAPE so long as the IEP adequately manages the student's behaviors.
  - Unfortunately, the IEP did not improve the behaviors that it addressed and resulted in a lack of educational progress.
  - The Court held that the district denied the student a FAPE due to the child's continued noncompliance and self-hitting behaviors after an FBA and BIP were included in her IEP.
  - The Court also ordered the district to reimburse the parents for the unilateral private placement.

62

District Prevailed in Dispute over ABA Services

- **A.W. by Wright v. Tehachapi Unified Sch. Dist., 76 IDELR 275 (9th Cir. 2020)**
  - The district properly provided a student with a one-to-one aide that was trained in ABA, to address the student's frequent "severe behaviors in the classroom, including banging objects, knocking items off shelves, kicking, hitting, biting, and eloping."
  - Although the parent contended that the aide needed supervision from a BCBA for two hours per week to completely eliminate the child's behaviors, the 9th Circuit opined that this was not necessary for FAPE.
  - The Circuit Court concluded "that the presence of the aide, along with positive interventions, appropriately reduced the frequency and severity of the student's behaviors and enabled him to receive an educational benefit."

63

Lack of Transition Plan Denied FAPE

- **Capistrano Unified Sch. Dist. v. S.W., 77 IDELR 137 (D. Cal. Aug. 19, 2020).**
  - The Court found that the district failed to provide FAPE because "the IEP team did not discuss the parents' request for a transition plan despite knowing about the planned move and the child's documented difficulties with transitioning between lessons and activities."
  - Thus, due to the district's disregard of the child's transition difficulties, the Court held that the resulting IEP could not have been reasonably calculated to provide FAPE.

64

Minor Deviations from the BIP were not Material

- **E.C. by W.C. and K.C. v. U.S.D. 385 Andover, 76 IDELR 212 (D. Kan. May 27, 2020).**
  - The District Court held, while the parents were correct that an administrator violated the BIP by entering a seclusion room before the student was calm, such deviation from the BIP did not amount to a violation because "the student's teacher had followed the BIP up until that point."
  - The teacher also failed to restrain the student as required by the BIP when the student began banging his head in the seclusion room. However, the Court held that the teacher expressed valid concerns that the student would become more violent if restrained and the student eventually did calm down and his actions did not result in any long-term harm
  - The district deviated from the BIP on a third occasion when the "school principal verbally engaged with the student while he was pulling limbs off a tree -- an action that contradicted the BIP." Fortunately, the principal was able to eventually calm the student down.
  - The Court concluded that the deviations from the BIP were not material because the student continued to make progress on his goals.

65

Failure to Make Behavioral Progress Denied FAPE

- **Colonial Sch. Dist. v. N.S., 76 IDELR 127 (E.D. Penn. March 27, 2020).**
  - IDEA requires an IEP team to consider positive behavioral interventions and supports for a student whose behaviors impede her own learning or the learning of others.
  - The district attempted to employ several "informal behavioral initiatives" which included the use of a behavioral chart tallying points for good behavior and the student's participation in a "lunch bunch" social skills group.
    - However, these initiatives did not meet that standard because they "were never modified, even after the district expressed continued or new concerns over the student's behavior."
  - Because an elementary school student with disabilities made little to no behavioral progress under the "motivational behavioral plan," the district erred in continuing that plan the following school year.
  - Thus, the Court held the district's failure to develop a BIP to address the student's ongoing difficulties with focus, aggression, and sexually inappropriate conduct amounted to a denial of FAPE.

66

FBA Entitled to IEE?

- **D.S. by M.S. and R.S. v. Trumbull Bd. of Educ., 77 IDELR 122 (2d. Cir. Sept. 17, 2020).**
  - Here, the Circuit Court rejected the "view that an FBA is an evaluation for which a parent can seek a publicly funded IEE" because "an FBA is a 'targeted examination' of a child behavior."
  - The Circuit Court observed that the IDEA's requirements for evaluation and reevaluations "made clear that 'evaluation' refers to a comprehensive assessment of a child in all suspected areas of disability."
  - Additionally, the court held that "because parents do not need to file a due process complaint to request an IEE, the panel reasoned, the two-year limitations period doesn't apply to IEE requests."
  - Thus, the Circuit Court "determined that any request for an IEE based on the October 2014 reevaluation was timely."

67

Compensatory Education for Behavior Deficits

- **L.M. by M.M. and M.M. v. Henry County Bd. of Educ., 76 IDELR 282 (E.D. Ky. July 6, 2020).**
  - Although the District Court agreed to clarify its reasons for awarding 300 minutes of one-to-one behavioral support each school week to a student with an emotional disturbance, it denied a Kentucky district's request to identify the specific facts supporting its compensatory education order.
  - The court held that the size of the award did not warrant the detailed accounting the district sought.
  - In this case, the judge observed, the Exceptional Children Appeals Board examined the evidence and determined that hour-for-hour compensation was necessary to address the student's behavioral deficits.
  - The judge explained that the district's failure to provide the behavioral supports the student needed, the student's ongoing behavioral struggles, and her anticipated difficulties in transitioning from a private special education school to a public high school all supported his previous order.

68

A Lack of Behavior Improvements Amounted to a Denial of FAPE

- **R.B. v. Downingtown Area Sch. Dist., 120 LRP 40311 (E.D. Penn., Dec. 23, 2020).**
  - Here, "Student's identified behaviors remained essentially constant over the two-year period that Student was in the District."
  - The Court found that the District was aware of the student's behaviors prior to kindergarten and "knew that distractibility was part of Student's disability, that this disability was negatively impacting Student's academic skills."
  - Thus, the Court found that Student's IEP, while properly implemented, was not allowing for appropriate progress due to the district's failure to amend the BIP sooner.
  - The Court upheld the IHO's finding that the district denied the student FAPE and failed to develop an appropriate IEP that addressed that student's behaviors.

69

Procedural/Parental Participation

70

Procedural Missteps Did Not Seriously Impede Parent Participation

- **J.T v. District of Columbia, 120 LRP 29954 (D.C. Oct. 1, 2012).**
  - Here, the parent was unable to show a denial of FAPE due to the districts failure to include a representative from a private school in IEP meetings that discussed the student's placement.
  - The U.S. District Court held that while the district violated the IDEA by failing to include such representative, such violation did not "result in an educational injury or significantly impede the parent's participation in the IEP process."
  - The U.S. District Court, District of Columbia upheld administrative decisions that the parent was not entitled to relief. However, the court awarded a full year of compensatory education for the district's failure to offer any placement the following school year.
    - See administrative decisions at 119 LRP 8421 and 119 LRP 16895

71

No Obligation to Consider Placement, But Must Consider Parent Input

- **G.S. and D.S. ex rel. S.S. v. Pleasantville Union Free Sch. Dist., 120 LRP 23646 (S.D.N.Y. Aug. 10, 2020).**
  - Parent alleged that district predetermined the student's placement.
  - "The District Court upheld the SRO's decision that the parents had a meaningful opportunity to participate in the IEP process" acknowledging that "the IEP team had no obligation to consider a residential placement," which was more restrictive, after it determined that the district could meet the student's needs.
  - The District Court explained that the IEP team must consider the parents' input, which it did here by "listening to a presentation by an independent evaluator and discuss his reasons for [his] recommendations."

72

Stay-Put Rights Enforced

- **L.A. v. New York City Dep't. of Educ., 120 LRP 26131 (S.D.N.Y. Sept. 1, 2020).**
  - According to the parent, after she requested during an IEP meeting that her son repeat a year at pre-K due to gaps in his education, the district "unilaterally" started talking about converting the child's IEP into an "IESP," which was "reserved for parents who have opted to place their child in a private or parochial school at the parents' own expense."
  - The District Court "ordered the district to comply with the IDEA and fund the child's private school placement."
  - The District Court explained "that under the IDEA, the stay-put automatically creates the injunction that the mother requested".
  - Thus, the District Court concluded that the district must continue funding the student's last placement during the pendency of an IEP dispute, even when that last placement was a private school.

73

Determining Statute of Limitation

- **Washington ex rel. J.W. v. Katy Indep. Sch. Dist., 120 LRP 10734 (S.D. Tex. March. 20, 2020).**
  - Parents alleged that the district refused to discuss the effects of a resource officer tasing a special education student.
  - However, the parent failed to file her complaint within one year of the incident.
  - The District Court explained that although the parent's allegations all relate to the tasing incident, each alleged failure to address the student's anxiety could be a separate IDEA violation, which would have occurred within the limitations period.
  - Thus, the District Court remanded the case with instructions to determine whether the parent's IDEA claims were timely.

74

Right to Open Due Process Hearing

- **Donohue v. Lloyd, 76 IDELR 252 (S.D. N.Y. June 1, 2020).**
  - Parent sued an IHO based on discrimination for declining Parent's request to relocate the due process hearing to allow for more than 100 supporters and denying Parent's request for television cameras.
  - The District Court explained that IHOs have "absolute judicial immunity" and therefore, may make any decision he/she feels appropriate relating to case management.
  - Thus, the District Court found that IHO acted within his judicial capacity and such decisions were not lacking and dismissed the parents Section 504 and ADA claims involving conduct at the due process hearing.

75

Prevailing Party's Attorney Fees

- **C.W. by B.W. and C.B. v. Denver County Sch. Dist. No. 1, 77 IDELR 5 (D.C. Colo. July 29, 2020).**
  - Despite the fact that the District Court dismissed the parents' 504, ADA, and constitutional claims on exhaustion grounds, the district was still ordered to pay the parents attorney's fees.
  - The District Court explained, "given that the parents' non-IDEA claims were based on the same facts the parents were entitled to fees for time spent working on those claims despite their lack of success."
  - Thus, the District Court denied the district's request to reduce the parents' fee award.

76

Parent will have to Defend District's Claim for Attorney's Fees

- **Chesterfield County Sch. Bd. v. Williams, 76 IDELR 216 (E.D. Va. May 21, 2020).**
  - Here, just three months after the parent and the district reached a settlement agreement the parent filed a second due process complaint over the settled issues.
  - The district sought to have the settlement agreement enforced.
  - Parent filed a motion to dismiss the enforcement action, which the Court dismissed.
  - The Court held in favor of the district finding the parent had a legally enforceable obligation to the district, which the parent violated, and the district suffered harm as a result of such violation.
  - The district also alleged it incurred significant financial costs as a result of defending the second complaint, which the District Court stated was a viable claim for relief.

77

Private School/Residential Placement

78

A Denial of FAPE Does Not Always Result in Reimbursements

- **L.M. by M.M. and M.M. v. Henry County Bd. of Educ.,120 LRP 11692 (E.D.KY. April 1, 2020).**
  - Here, the District Court reaffirmed its previous decision that parents were not entitled to reimbursement for the student's private school costs, despite denying the student a FAPE.
  - The District Court explained that the parents failed to show the private school program was designed to meet the student's unique needs.

79

Despite Flaws, Private School Found Appropriate

- **Board of Educ. of the Wappingers Cent. Sch. Dist. v. D.M. and A.M. ex rel. E.M., 120 LRP 3472 (S.D.N.Y. Jan. 30, 2020).**
  - Parents filed complaint after district placed student in 15:1 class when he struggled the previous year in small group classes for math and reading.
  - The Court rejected the districts argument that the student would benefit by explaining that "less staff and more students" results in "even less support" than he received in previous year.
  - The Court acknowledge that the private school had flaws *(failure to develop IEP, failure to develop specific plan, and lack of counseling services)* but explained that reimbursement was appropriate "as long as it provided instruction that was specifically designed to meet student's unique needs."
  - The Court held that classes of "six students and four staff provided the intensive support the student needed" and because of the "student's significant process in reading in math, placement was appropriate despite its flaws."

80

A District May Relocate a Student to a Similar School with the Same Opportunities

- **Ventura de Paulino v. New York City Dep't. of Educ., 120 LRP 15840 (2d Circ. May 18, 2020).**
  - Here, the Circuit Court looked to the interpretation of "placement" under the IDEA to make its ruling.
  - The Circuit Court explained that the IDEA permits a district to relocate a student during the pendency of a dispute if the student will receive the same services and opportunities that he receives at his current placement.
  - The court further explained that parents do not have this same luxury, a parent may unilaterally place their child in a different placement, but they do so at their own risk.
  - Thus, the Circuit Court vacated and remanded a decision which required the district to pay for the parent's unilateral placement.

81

District Did Not Violate the IDEA by Placing Student in a School not Requested by Parents

- **G.R. by Miramontes and Roberts v. Del. Mar. Union Sch. Dist., 120 LRP 13435 (S.D. Cal. April 21, 2020).**
  - Here, the Parents requested their son with severe anxiety be placed in a residential treatment center. Instead, the district placed him in a therapeutic public school.
  - Parents filed this suit seeking reimbursement for the student's unilateral residential placement claiming that he needed such placement because he regressed behaviorally while attending a day program.
  - Despite the student's behaviors escalating, which resulted in 45 incidents of physical restraints over a four-month period, the District Court upheld the ALJ's decision that parents were not entitled to reimbursement because the district proved he made appropriate academic and social progress.
    - The District Court noted that such progress included an increase in participation in therapy sessions and his classes, as well as his ability to ride the bus without adult support.

82

Parents Actions Caused Denial of Private School Reimbursement

- **J.F. and J.F. ex rel J.F. v. Byram Twp. Bd. of Educ., 120 LRP 15668 (3d Circ. May 14, 2020).**
  - Here, the parents unilaterally placed their child in a private school without providing the district a 10-day notice.
  - The Circuit Court explained that courts may reduce or deny reimbursement if the parents failed to provide written notice of their concerns pursuant to the IDEA prior to making a unilateral placement.
  - The Circuit Court found than many of the parent's actions were unreasonable, such as declining to visit the proposed placement, failing to express their concerns with that placement, and failing to to participate in a collaborative process with the district.

83

Residential Placement Not Educationally Necessary

- **Braydon K by Mark K. and Michelle K. v. Douglas County Dist. RE-1, 120 LRP 16701 (D.C. Colo. May 29, 2020).**
  - The parents sought to receive a publicly funded residential placement for their son.
  - However, despite the parent's concern regarding the district's ability to reinforce behavior management strategies, they failed to prove he required "around-the-clock services" to gain an educational benefit.
  - The Court explained that a district need only provide a student the services necessary to amount to a FAPE and residential placement typically used to assist with the student's medication management and mental health issues, not the student's out-of-school behaviors.
    - Thus, a district is only required to provide residential placement if educationally necessary.
  - The Court reversed the lower court's decision in favor of the parent and found that the district offered a FAPE because it proposed the same structured environment and therapeutic supports as the residential program.

84

District had no obligation to offer Residential Placement when Progress Appropriate in Day Program

- **N.G. by R.G. and G.G. v. Placentia Yorba Linda Unified Sch. Dist., 120 LRP 12046 (9th Circ. April 6, 2020) (unpublished).**
  - Parent asserted that her autistic adult child required residential placement due to the aggressive and self-injurious behaviors that occurred at home.
  - Because adult student made "significant behavioral and educational progress" at school, the Circuit Court upheld the District Court's ruling against parents claim that she needed residential placement to receive a FAPE.
  - Despite finding that the student did not require residential placement, the Circuit Court held parents were entitled to reimbursement for educational costs of the student's unilateral placement because the district failed to verify the availability of the proposed day placement.

85

A District Must Fully Consider Student's Needs Before Determining Placement

- **D.L. by Landon v. St. Louis City Sch. Dist., 120 LRP 7922 (8th Circ. March 2, 2020).**
  - Here, the district recommended placing a student with autism in a behavior-centered school that did not offer the critical supports that the student needed in order to be academically successful.
  - Specifically, the student required sensory supports, but the proposed school did not offer such. Testimony revealed that the school served children with emotional disturbances and those in need of discipline.
  - The Court acknowledge that after the parents filed the due process suit, the proposed school built a sensory room and admitting children with autism.
    - Unfortunately, the district failed to notify the parents of those improvements.
  - The Circuit Court found that the district denied a FAPE and ordered reimbursement for student's unilateral private placement.

86

District's Proposed Placement Addressed the Student's Needs

- **Clarfeld ex rel. P.M. v. Department of Educ., State of Hawaii, 121 LRP 2235 (D.C. Haw., Jan. 15, 2021).**
  - The Court held the student's placement was appropriate and not predetermined.
  - The Court explained that if the proposed placement was able to only meet one of the students needs then it would not be appropriate, and parents would be entitled to reimbursement.
  - However, the proposed placement in this case was able to address all of the student's needs including occupational therapy, counting, reading, communication skills, and daily living skills.

87

Private Placement Does Not Need to Provide Every Possible Special Service

- **Board of Educ. of the Wappingers Cent. Sch. Dist. v. D.M. and A.M. ex rel. E.M., 120 LRP 40163 (2d Cir., Dec. 18, 2020).**
  - The parent's unilateral placement provided a small environment designed for autistic children without behavioral issues, along with real-world socialization opportunities.
  - The Court found that despite the unilateral placement not offering occupational or speech therapy and most of the teaching staff not containing state certification, it was the appropriate placement because the small class size allowed the ability to provide ample 1:1 attention.

88

Failure to Provide Notice of Placement May Not Shield a District from Reimbursement

- **K.E. and B.E. ex rel. T.E. v. Northern Highlands Bd. of Educ., 120 LRP 39639 (3d Cir., Dec. 16, 2020).**
  - The Circuit Court found that the "ALJ and the District Court appear[ed] to have faulted the parents for failing to provide the district ten days' notice of the placement."
  - However, the Court explained that the IDEA "requires ten days' notice of the parents' rejection of the placement proposed by the public agency to provide a FAPE to their child, including…their intent to enroll their child in a private school at public expense."
    - Here, Northern Highlands did not propose a placement until a month after school had commenced. And in that circumstance, a different subsection of the IDEA comes into play."
  - The Circuit Court remanded the case for reconsideration.

89

Section 504, ADA, & Other Related Laws

90

Requirement to Exhaust Section Claims Failing to Implement 504 Accommodations?

- **McIntyre v. Eugene Sch. Dist. 4J, 976 F.3d 902 (9th Cir. 2020).**
  - The student claimed the district failed to implement the testing accommodations and health protocol in her Section 504 plan.
    - The Circuit Court held that those accommodations did not qualify as "special education" or "related services" under the IDEA.
  - The Circuit Court determined "the student was seeking relief for the denial of equal access as opposed to a denial of FAPE as defined by the IDEA, the panel held that the District Court erred in dismissing her complaint on exhaustion grounds."
  - Because the student did not seek administrative relief for a denial of a FAPE, the 9th Circuit reversed a District Court ruling at that dismissed the student's Section 504 and ADA on exhaustion grounds.

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Exhaustion is not Required Where the District Failed to Accommodate

- **Piotrowski ex rel. J.P. v. Rocky Point Union Free Sch. Dist., 120 LRP 16865 (E.D. N.Y. May 28, 2020).**
  - Here, parents brought suit against a district after it allegedly repeatedly punished and eventually suspended the student for cell-phone use, despite his IEP permitting cell-phone use to aide in managing his diabetes.
    - The student was allegedly repeatedly punished for using his cell-phone and going to the nurse's office to check his glucose
  - If true, the administrators, who allegedly were aware of his accommodations, could be found to have acted in bad faith or gross misjudgment.
  - The District Court held that the parent could seek money damages under 504 and ADA; and denied the districts motion to dismiss parent's 504, ADA, and constitutional claims.

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Student's Ability to Cease Actions Indicates Behavior Independent of Disability

- **Froio v. Monroe-Woodbury Cent. Sch. Dist., 76 IDELR 213 (S.D. N.Y. May 26, 2020).**
  - Student's persistent sending of inappropriate emails to her teacher despite multiple warning against such actions resulted in law enforcement arresting her.
  - Student then brought this suit alleging a denial of FAPE and discrimination based on a teacher contacting law enforcement.
  - However, the student was unable to convince the courts that her actions (including the surplus of emails and going to teacher's home) were due to her disabilities.
  - The District Court explained that it was evident that the student was in control of her actions because she was able to stop her actions once she was informed of the possibility of going to jail.
  - The District Court held, there was no evidence to show that the district acted in bad faith or with gross misjudgment because no administrator filed a police report, assisted the teacher in making her report, or told the teacher to contact the police.

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Parents Fail to Claim Bad Faith

- **Bradyn S. by Justin S. and Meghan S. v. Waxahachie Indep. Sch. Dist., 77 IDELR 130 (N.D. Tex. Sept. 23, 2020).**
  - Parent of an autistic boy could not show the district intentionally failed to provide accommodations because the district delayed an IEP meeting to gather information about his aggressive and self-injurious behaviors.
  - The parents in this case claimed the district's delay in convening an IEP meeting and changing the child's placement following a serious behavioral incidents involving restraint by police officers demonstrated a refusal to accommodate.
  - The Court explained that the "complaints about the [district's] delay in reassigning [the child] or holding certain meetings constitute at most, mere negligence, rather than bad faith or gross misjudgment."
  - The Court further held that "without an underlying constitutional violation, the parents could not show the district violated the child's constitutional rights by failing to train staff members on the use of restraint."

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Parent Failed to Show Deliberate Indifference

- **R.N. by Neff v. Travis Unified Sch. Dist. 194, 120 LRP 38708 (E.D. Cal. Dec. 8, 2020).**
  - Parent alleged disability discrimination due to physical and psychological abuse of R.N.
  - R.N.'s paraeducator allegedly kicked her while forcing her out of a sensory area, yelled at her while forcing her to stand, grabbed R.N. by her ankles and drug her across the ground, forced her to sit by grabbing her shoulders and pushed her into a chair, grabbed R.N. by her jacked and pushed her to the ground, and physically held her down while forcing her to pick up grapes from the ground.
  - However, the Court dismissed the parent's claims for failure to state a claim, reasoning that the allegations of abuse alone and vague allegation of knowledge of abuse and failure to train are not enough.

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Retaliation

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Elements of Retaliation Claim

- **Kirilenko-lson v. Bd. of Educ. of Danville Indep. Schs., 77 IDELR 91 (6th Cir. 2020).**
  - The 6th Circuit Court, in a case involving retaliation against employees who advocated for a change in program for students with diabetes, explained that in order to establish unlawful retaliation the nurses needed to show that:
    - 1) they engaged in a protected activity;
    - 2) the district knew about that activity;
    - 3) the district took adverse employment action against them; and
    - 4) the protected activity was the reason for the adverse action.
  - The Circuit Court further explained, "if the district showed that it had a legitimate, nonretaliatory reason for the employment action, the nurses could still prevail by showing that stated reason was a pretext for retaliation."

Cont.

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A District's Reasoning for its Actions Must Not be Pretextual

- **Kirilenko-lson v. Bd. of Educ. of Danville Indep. Schs., 77 IDELR 91 (6th Cir. 2020), cont.**
  - Here, two school nurses filed retaliation claims because the "district took adverse employment acton against them because they raised concerns about the services and accommodations being provided to students with diabetes."
  - The District Court explained that "if the district showed that it had a legitimate, nonretaliatory reason for the employment action, the 6th Circuit observed, the nurses could still prevail by showing that stated reason was a pretext for retaliation."
  - The District Court held, "Because a reasonable jury could find in the nurses' favor the District Court erred in granting judgment for the district."
  - However, "the 6th Circuit upheld the District Court's judgment for the district on the first nurse's claim that it failed to accommodate her disabilities."

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Vague and Unspecific Retaliation Claims will Likely be Found Unsuccessful

- **K.S. and C.S. v. Warwick Sch. Comm., 120 LRP 34285 (D.C. R.I., Oct. 29, 2020).**
  - Here, the student alleged the following adverse actions: 1) failure to implement her IEP; and 2) adversarial tactics towards her mother.
  - The District Court found that there was not denial of FAPE because the IEP was complied with and the student's allegations of adversarial tactics lacked specificity and were too vague to support a retaliation claim.
  - Thus, the District Court granted the district's motion for judgment due to the lack of evidence showing adverse action against the student.

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Removal Based on Code of Conduct Violation did not Result in Retaliation

- **Wong v. Board of Educ., 77 IDELR 43 (D.C. Conn. Aug. 7, 2020).**
  - Here, "the parents alleged that the district limited their efforts to communicate with school staff and took adverse action by removing their son from the National Honor Society following their advocacy for him related to a disciplinary incident."
  - The superintendent provided the parents with a letter outlining the new "mutual expectations and procedural steps for facilitating timely and appropriate responses and services to meet the needs of Student because of a new process instituted in response to their 'hostile' messages whereby building administrators take time each day to review all email messages sent by [the parents] to staff members before those respective staff members receive them.
  - The Court noted that the "district removed the student from the Honor Society after he violated a code of conduct and was suspended" and found that such "action did not adversely impact [his] education."
  - Thus, the Court concluded that "the parents had no viable retaliation claims."

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Thank you!

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