



The Year's Top Special Education Cases

ConnCASE Legal Conference
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Agenda

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

Disclaimer: The information in this handout and presentation is for the purpose of providing general information and is not intended to provide legal advice or substitute for the legal advice of counsel.

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Free Appropriate Public Education (FAPE)



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FAPE Under *Andrew F.*

- 💧 Andrew 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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Case Law: FAPE: Facts

- 💧 Elmira City Sch. Dist. v. New York State Educ. Dep't, 80 IDELR 294 (N.Y.S.C. Apr. 7, 2022).
 - 💧 IEP team determined that KG with significant medical issues, including a condition that caused mucous to accumulate in her throat requiring suctioning to avoid asphyxiation, required "1:1 supervision from a nurse for suctioning, feeding, transfers, toileting, and overall care."
 - 💧 Ultimately, child only attended 1 day of school for the year.
 - 💧 District provided a 1:1 nurse at the start of the year.
 - 💧 Parent showed the nurse how to perform a nasal tracheal suctioning procedure (which nurse repeated)
 - 💧 Parent refused to send child back to school until nurse was trained on suctioning—Nurse claimed she was already competent to provide suctioning
 - 💧 Around the same time, district had concerns about medication discrepancies with the Physicians' Order and Treatment Plan (which mother had altered) and refused for child to attend school until the orders were corrected.
 - 💧 Orders were corrected by mid-December (by the family, as they did not allow school nurse to communicate with doctor directly), but mother still would not send because nurse had not received additional training on suctioning.
 - 💧 In February, district's nurse resigns, and the district is unable to fill her position.
 - 💧 In March, parent disagreed with recommendations by the IEP team for home instruction or residential placement.

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Case Law: FAPE: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: FAPE: Ruling Rationale

- 💧 Elmira City Sch. Dist. v. New York State Educ. Dep't, 80 IDELR 294 (N.Y.S.C. Apr. 7, 2022).
 - 💧 Denial of FAPE Claim- Sept-Dec. 2018
 - 💧 Court found no denial of FAPE.
 - 💧 While the district's nurse refused to provide care because of the discrepancy in the medical orders, the delay until mid-Dec. in getting the new orders were not caused by the district because, not only did the parent's SW take on the role of obtaining the orders, the parent refused to allow the school's nurse to communicate directly with the physician and the school's nurse had ongoing communication with the SW about what orders were needed. Additionally, the parent was still refusing to send the child because the suctioning dispute.
 - 💧 Denial of FAPE Claim- Dec.-Feb. 2018
 - 💧 SRO found no denial of FAPE (not appealed)- District had physician's orders and provided a nurse who was adamant that she was qualified to suction.
 - 💧 Denial of FAPE Claim- Feb.-June 2018
 - 💧 Court found denial of FAPE.
 - 💧 Impossibility of performance defense is generally at odds with the purpose of the IDEA.
 - 💧 Proposal for home instruction or residential was because of an inability to hire a 1:1 RN, not because of the child's LRE needs.

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Case Law: FAPE: Facts

- 💧 Osseo Area Schs., Indep. Sch. Dist. No. 279 v. AJ.T by A.T. and G.T., 81 IDELR 256 (D.Minn. Sept. 13, 2022).
 - 💧 AJ.T. was a 15-year-old student who experienced severe seizures during the mornings.
 - 💧 The district proposed an IEP that allowed her to begin the school day and noon and ended her school day at 3p.m. because the school day ended at 2:40 p.m.
 - 💧 The parents disagreed and argued that the district should educate her from noon until 6:30 p.m.

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Case Law: FAPE: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: FAPE: Ruling Rationale

- 💧 Osseo Area Schs., Indep. Sch. Dist. No. 279 v. A.J.T by A.T. and G.T., 81 IDELR 256 (D.Minn. Sept. 13, 2022).
 - 💧 The District Court upheld the ALJ's ruling that the district denied the student FAPE because providing only 4.25 hours of schooling per day was not sufficiently ambitious.
 - 💧 The Court ordered the district to extend the student's instruction day until 6 p.m. and provide comp. ed.
 - 💧 The Court reasoned that the school district has an obligation under *Andrew F.* standard to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

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Case Law: FAPE: Facts

- 💧 J.L. v. Lower Merion Sch. Dist., 81 IDELR 251 (E.D. Penn. Sept. 15, 2022).
- 💧 The parents claimed the district denied the teenager FAPE by failing to allow him to use a methodology that involved pointing to letters on a board with the help of a trained partner.
- 💧 Student's mother often directed him toward the correct letter to help him use a letter board to communicate.

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Case Law: FAPE: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: FAPE: Ruling Rationale

- 💧 J.L. v. Lower Merion Sch. Dist., 81 IDELR 251 (E.D. Penn. Sept. 15, 2022).
 - 💧 The District Court upheld the IHO's decision in favor of the district.
 - 💧 The District Court explained that a district generally has discretion to select an appropriate educational methodology.
 - 💧 The District Court agreed with the IHO in that the communication methodology the parents wanted wasn't effective for the student.
 - 💧 The Court reasoned the following:
 - 💧 The parent's preferred methodology was not research based;
 - 💧 it presented a danger of the student becoming over dependent on a communication partner; and
 - 💧 the student was unable to effectively communicate with a letterboard unless his mother guided him to the correct answers.

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Case Law: FAPE: Facts

- 💧 Reynolds ex rel. J.R. v. George County Sch. Dist., 81 IDELR 282 (S.D. Miss. Sept. 28, 2022).
 - 💧 Parents alleged that the district denied J.R., a student with autism, a FAPE due to failure to implement an IEP, denial of transportation, denial of a BCBA, RBT, and an appropriate BIP, denied of the opportunity to participate with nondisabled peers, and denied a specially designed physical education.
 - 💧 Specifically, Plaintiffs asserts that J.R. was denied a FAPE when he was reduced from a full day of instruction to four hours per day and then from four hours per day to one hour per day.
 - 💧 The district argued that during the 2016-17 school year, J.R. was immersed in the general education population as much as possible but received his academic instruction in a self-contained classroom.
 - 💧 While his mother expressed some concerns about behavioral issues at home, J.R. did not exhibit those behaviors in the school setting until the next school year--2017-18--that the issues began.
 - 💧 During the 2017-2018 school year the student received one hour a day, four days a week homebound (in an office at the school) due to increasing aggressive behaviors.

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Case Law: FAPE: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: FAPE: Ruling Rationale

- 💧 Reynolds ex rel. J.R. v. George County Sch. Dist., 81 IDELR 282 (S.D. Miss. Sept. 28, 2022).
 - 💧 The District Court upheld part of the IHO's finding that the district provided J.R. FAPE during the 2016-2017 year.
 - 💧 However, the District Court vacated the IHO's decision in part, holding that the October 2017 IEP modification was not reasonably calculated to provide an educational benefit.
 - 💧 The judge noted that the October 2017 IEP was developed by key stakeholders, but found multiple flaws with the revised IEP, which included the following:
 - 💧 the district's decision to eliminate state-mandated instruction in PE meant the student's program was not sufficiently individualized.
 - 💧 the IEP was not implemented in the LRE because the student attended school for one hour a day, four days a week, and that he received all instruction and services in an administrative office.
 - 💧 "[The student's] educational environment often consisted of him sitting in a chair for one hour a day, secluded from other children, still wearing his backpack, with little academic instruction, and the focus was on redirecting negative behaviors,"
 - 💧 student was unable to attempt certain IEP goals and was making little to no progress on others due to his escalating behavioral problems.

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Case Law: FAPE: Facts

- 💧 Kass v. Western Dubuque Cmty. Sch. Dist., 82 IDELR 67 (N.D. Iowa, Nov. 3, 2022).
 - 💧 Parents disagreed with the educational methodology the district used to educate their high school son with multiple disabilities.
 - 💧 The district argued that the student made progress in reading between his 11th and 12th grade years.
 - 💧 The parents' independent evaluator opined that he student would have made even greater progress if the district had used the Orton-Gillingham or Wilson reading programs.

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Case Law: FAPE: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: FAPE: Ruling Rationale

- 💧 **Kass v. Western Dubuque Cmty. Sch. Dist., 82 IDELR 67 (N.D. Iowa, Nov. 3, 2022).**
 - 💧 The District Court upheld the ALJ's finding that the district provided the student FAPE because the district's progress-monitoring data demonstrated that the reading methodologies were appropriate.
 - 💧 The Court explained that the district is not required to use the most effective methodology available, rather, the district only needed to ensure that the chosen methodology allowed the student to make appropriate progress.
 - 💧 The Court reasoned that the student met 31 percent of rubric standards after receiving instruction using the PCI reading program, which exceeded his IEP goal of 25 percent.
 - 💧 The student made even greater progress after the district switched the student to a different reading methodology in his senior year.

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Case Law: FAPE: Facts

- 💧 **Pontarelli v. McKee, 82 IDELR 134 (D.C. R.I. Jan. 19, 2023).**
 - 💧 Mr. Pontarelli filed 15 state administrative complaints ("SACs") against the Rhode Island Department of Education ("RIDE") and the Department of Children, Youth, and Families ("DCYF"), each alleging the denial of a FAPE to a child in DCYF care who had been placed in a residential treatment facility.
 - 💧 Mr. Pontarelli claims he has the right to file an action because the IDEA provides that any "individual" may file an administrative complaint alleging a violation of the IDEA.
 - 💧 By refusing to investigate the SACs he filed, Mr. Pontarelli argues, RIDE nullified his rights and caused an injury to him that the Court could rectify.
 - 💧 Defendants argued that Mr. Pontarelli was neither a student nor a parent of a student, but merely "a concerned citizen with a potential procedural violation."

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Case Law: FAPE: Holding

- 💧 You be the judge:
 - 💧 A) For the Plaintiff
 - 💧 B) For the Defendants
 - 💧 C) Split Decision

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Case Law: FAPE: Ruling Rationale

- 💧 Pontarelli v. McKee, 82 IDELR 134 (D.C. R.I. Jan. 19, 2023).
 - 💧 The Court held that Mr. Pontarelli failed to articulate an injury to himself that extended beyond a bare procedural violation, and as such the Court could not find that he had established standing to pursue this complaint.
 - 💧 The Court explained that there are other ways for children to have their rights vindicated, such as by an advocate or by next of kin or next friend.

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Child Find, Evaluations, & Eligibility



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Case Law: Child Find: Facts

- 💧 M.W. v. Rankin County Pub. Sch. Dist., 80 IDELR 136 (S.D. Miss. Jan. 5, 2022).
 - 💧 M.W. was enrolled in the Rankin County School District from Kindergarten through 2nd grade.
 - 💧 In 2015, M.W.'s Kindergarten year, the district administered a dyslexia screener.
 - 💧 M.W. failed the screener, however, no further evaluation or follow-up was done during his kindergarten year and M.W.'s mother was never notified of this screening nor of its results.
 - 💧 In 1st grade, the District conducted another dyslexia screener which M.W. passed.
 - 💧 District states no record is required to be kept of passed screenings, therefore there is no record of this screening, or any other testing related to dyslexia.
 - 💧 M.W. continued to struggle academically, consistently receiving "Unsatisfactory" in all of his subjects.
 - 💧 During 2nd grade, M.W.'s mother arranged for an IEE where he received a diagnosis of mild dyslexia and ADHD.
 - 💧 M.W. was then provided with a 504 plan.
 - 💧 No services or accommodations made regarding dyslexia.

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Case Law: Child Find: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: Child Find: Ruling Rationale

- 💧 *M.W. v. Rankin County Pub. Sch. Dist.*, 80 IDELR 136 (S.D. Miss. Jan. 5, 2022).
 - 💧 The District Court held that the district violated Child Find and denied M.W. a FAPE based on a series of omissions and things the district "did wrong":
 - 💧 When M.W. failed the dyslexia screener the district did not conduct any follow up evals;
 - 💧 Failed to inform parents of screener and results;
 - 💧 Determining that M.W. did not need further evaluation related to dyslexia in second grade, the district relied partly upon a screening from first grade, but there is no documentation of that test;
 - 💧 Failed to recognize the child's ADHD and failed to provide services related to that condition until the Mississippi Dyslexia Center uncovered that condition;
 - 💧 M.W.'s second grade teacher knew he had failed the dyslexia screener and was aware that he was struggling with reading, but did not recommend any follow-up assessment or treatment relative to dyslexia;
 - 💧 The district did not take the required steps to identify what was needed to provide FAPE.
 - 💧 The district ignored the failed dyslexia screener in M.W.'s kindergarten year and ignored again it in his second-grade year, although he was struggling academically.
 - 💧 However, the Court did note that the district "did several things right to identify the child in need" such as providing the dyslexia screener in kindergarten; provided a Language/Speech: Articulation ruling and provided services to him in that category in second grade; and the district also utilized Tier 2 interventions and later Tier 3 interventions.

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Case Law: Child Find: Facts

- 💧 C.B. v. North East Indep. Sch. Dist., 80 IDELR 162 (W.D. Tex. Feb. 16, 2022).
 - 💧 12th grade gifted student, diagnosed with ADHD in 2nd grade, but performed well through her elementary education.
 - 💧 While attending middle school she was diagnosed with GAD, which increased during her 9th grade year (2018-2019). C.B. was medicated, which the school nurse assisted with.
 - 💧 During 10th grade (2019-2020), C.B. was placed in an outpatient center due to suicidal ideation and returned to school late September. Her grades began to slip and was then placed in a residential treatment facility due to depression and anxiety in November. C.B. withdrew from school on December 2, 2019.
 - 💧 The district argues it never had reason to suspect C.B. should be evaluated for eligibility for special education services because she was designated as a gifted and talented student and achieved high academic performance throughout the time at issue.
 - 💧 The district further argues that its Child Find obligation to C.B. ceased when she withdrew from school and entered private placement out of state.

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Case Law: Child Find: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: Child Find: Ruling Rationale

- 💧 C.B. v. North East Indep. Sch. Dist., 80 IDELR 162 (W.D. Tex. Feb. 16, 2022).
 - 💧 The District Court held the district failed to see signs of disability due to C.B.'s history of success and the district had reason to suspect C.B. may have a disability and should be evaluated for eligibility for special education services by December 2019.
 - 💧 The Court explained that while the district had knowledge of C.B.'s ADHD and anxiety prior to December 2019, the holistic view and culmination of information did not present reason to suspect a need for evaluation.
 - 💧 However, in December 2019, the district's knowledge of C.B.'s ADHD, increasing anxiety and depression which required outpatient treatment for an extended time, and her eventual withdrawal from school to attend a full-time treatment facility presented sufficient reason to suspect C.B. may have a disability and should be evaluated.

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Case Law: Child Find: Facts

- 💧 Ashley G. ex rel M.G. v. Copperas Cove Indep. Sch. Dist., 80 IDELR 179 (5th Cir. March 15, 2022).
 - 💧 Parent alleged that the district failed to timely provide a comprehensive evaluation of eighth-grade male student with autism, depression, and ODD with Section 504 plan.
 - 💧 M.G. did not have any significant academic or behavioral issues at the start of 2018-19 SY.
 - 💧 He was performing grade-level work and earning passing marks in all but one of his classes.
 - 💧 He had behaviors (running in the hall and horseplay) that prompted two disciplinary referrals early in the year.
 - 💧 His behaviors increased and eventually led to the admin. filing felony charges against him and seeking to place him in an alternative school.
 - 💧 On November 29, 2018, the district agreed to conduct an evaluations and requested parent consent.
 - 💧 In response, parents requested the documents be emailed to her. The district refused to email them and offered to send someone to M.G.'s home, but parents refused.
 - 💧 On December 18, 2018, the district provided M.G.'s parents with the consent forms at the mandatory resolution session.
 - 💧 While on winter break, on Jan. 4, 2019, the consent form was completed, and the district began the evaluation four days later.
 - 💧 District determined M.G. was eligible for sped due SLD in Reading Comprehension.

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Case Law: Child Find: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: Child Find: Ruling Rationale

- 💧 Ashley G. ex rel M.G. v. Copperas Cove Indep. Sch. Dist., 80 IDELR 179 (5th Cir. March 15, 2022).
 - 💧 The Circuit Court found that the Student's passing marks and typical behaviors justified the district's evaluation timeline.
 - 💧 The 5th Circuit Court affirmed a District Court ruling for the district on the parents' IDEA, Section 504, and ADA claims because:
 - 💧 the district had no reason to suspect the student had a disability-related need for specialized instruction before his parents requested an IDEA evaluation;
 - 💧 the district began the evaluation process four days after receiving the signed consent forms;
 - 💧 the evaluation correctly identified the student's SLD in reading comprehension;
 - 💧 parents were responsible for any delay in determining the student's eligibility for IDEA services.

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Case Law: Child Find: Facts

- 💧 Malloy v. District of Columbia, 80 IDELR 242 (D.D.C. Mar. 30, 2022).
 - 💧 Student had significant absences
 - 💧 10th Grade- Between 43-64 unexcused absences (depending on the class period)
 - 💧 Resulted in a truancy referral to court
 - 💧 11th Grade- 99 absences
 - 💧 Student had poor grades
 - 💧 9th Grade- 5 C's, 2 B's, 3- D's, and 1 F
 - 💧 10th Grade- Failed 7 of 9 classes
 - 💧 Student had poor state test scores
 - 💧 8th Grade- 1 out of 5 on ELA and Math assessments
 - 💧 9th Grade- 1 out of 5 on the ELA, Math, and Algebra assessments
 - 💧 Teachers expressed concerns:
 - 💧 Performing poorly academically and not improving over time
 - 💧 Disinterested in class, lacked focus and ability to complete work successfully
 - 💧 Refused to work, would get up and walk around class, banged on classroom door and cursed after late to class

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Case Law: Child Find: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: Child Find: Ruling Rationale

- 💧 Malloy v. District of Columbia, 80 IDELR 242 (D.D.C. Mar. 30, 2022).
 - 💧 Reversed Hearing Officer's ruling that, factually, truancy was the only possible indication of a suspected disability.
 - 💧 Held that the parent met her burden in "showing that school officials overlooked clear signs of a disability and were negligent in failing to order testing. (6th Cir. standard for evaluating child find claims)
 - 💧 HO ignored substantial evidence of a suspected learning or behavioral disability in the form of poor test scores, grades, teacher comments, classroom behavior, and attendance.

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Case Law: Evaluation: Facts

- 💧 Heather H. ex rel. P.H. v. Northwest Indep. Sch. Dist., 81 IDELR 32 (5th Cir. 2022).
 - 💧 Prior to enrolling in KG, parents provided the district with a private psych eval. diagnosing P.H. with Autism Spectrum Disorder, General Anxiety Disorder, and separation anxiety.
 - 💧 Parents requested an evaluation for special education. Team found the student ineligible for an IEP. He was eventually found eligible for a Section 504 plan for anxiety.
 - 💧 Parents disputed the evaluation, asserting that the district failed to evaluate for emotional disturbance (instead only evaluating for OHI)
 - 💧 District argued: (1) ED was not suspected because he did not display anxiety at school and (2) evaluation did cover "emotional and behavioral functioning" which captures anxiety.
 - 💧 District filed due process to defend evaluation instead of paying for Independent Educational Evaluation (IEE) requested by the parent

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Case Law: Evaluation: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: Evaluation: Ruling Rationale

- 💧 Heather H. ex rel. P.H. v. Northwest Indep. Sch. Dist., 81 IDELR 32 (5th Cir. 2022).
 - 💧 Court held that Plaintiffs' evidence of a private diagnosis of separation anxiety and one teacher's comment that is could sometimes be "overly emotional" did not rise to the level of a suspected disability; thus, there was no failure to "assess in all areas of suspected disability."
 - 💧 There were no observations of anxiety in school setting. Educational performance was not suffering. Teachers observed that he had a relatively normal transition to KG.
 - 💧 Court held that district did evaluate, at least in part, student's anxiety by administering the BASC-3, so it did not overlook the student's anxiety.

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Case Law: Eligibility: Facts

- 💧 P.F. and K.F. ex rel. G.F. v. Ocean Twp. Bd. of Educ., 81 IDELR 261 (N.J., Sept. 20, 2022).
 - 💧 A 10-year-old student with ADHD received a private dyslexia diagnosis.
 - 💧 Parent requested that the district make her eligible for an IEP.
 - 💧 However, the district determined that she did not have an SLD as defined by the IDEA.
 - 💧 The district argued that her disability did not have an adverse affect on her educational performance because she demonstrated satisfactory performance and was making progress.

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Case Law: Eligibility: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: Eligibility: Ruling Rationale

- 💧 P.F. and K.F. ex rel. G.F. v. Ocean Twp. Bd. of Educ., 81 IDELR 261 (N.J., Sept. 20, 2022).
- 💧 The District Court found in favor of the school district concluding that the determination that the student was ineligible under the IDEA was appropriate.
- 💧 The Court reasoned the following:
 - 💧 After conducting "a complete battery of assessments," including a review of current work samples, teacher observations, and input from the general education teacher, the district found no severe discrepancy between her aptitude and academic achievement.
 - 💧 Even if the district found the student to have an SLD, the disability did not adversely affect her educational performance to the point that she needed special education and related services.

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IEP Development & Implementation



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Case Law: IEP Development: Facts

- 💧 A.M. v. Wallingfor-Swathmore Sch. Dist., 81 IDELR 246 (E.D. Penn. Sept. 21, 2022).
 - 💧 The IEP team developed an IEP for an academically gifted high schooler with ADHD and a specific learning disability that anticipated he would perform slightly below grade level because he was unable to complete writing assignments despite the extensive accommodations he received during his eighth-grade year.
 - 💧 Parent disagreed and filed a due process complaint alleging that the district failed to recognize A.M.'s potential and failed to develop an appropriate IEP.
 - 💧 Parent argued that A.M. fell short of his grade level performance and failed to meet his IEP goals in writing despite having extended deadlines and being excused from completing 50 percent of all writing assignments.

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Case Law: IEP Development: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: IEP Development: Ruling Rationale

- 💧 A.M. v. Wallingfor-Swathmore Sch. Dist., 81 IDELR 246 (E.D. Penn. Sept. 21, 2022).
 - 💧 Court upheld the IHO's ruling that the 9th grade IEP was appropriate in light of the student's circumstances due to the student's ongoing struggles with writing.
 - 💧 The Court noted that "while A.M. was educated in grade-level classes (including several advanced classes), the district accommodated [his] disabilities by holding [him] to less rigorous standards than his peers in writing and assignment completion."
 - 💧 The District Court explained that the district does not have to aim for a level of academic performance the student is not capable of meeting.

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Case Law: IEP Development: Facts

- 💧 Z.A.R. ex rel. E.J. v. City of New York, 81 IDELR 283 (E.D. N.Y. Sept. 27, 2022).
 - 💧 The parent disagreed with the New York district's proposed program and decided to unilaterally enroll her child in a private school and then sought tuition reimbursement from the district.
 - 💧 The school district argued that parent hindered the development of the IEP because parent was not cooperative in the IEP process.
 - 💧 The parent also refused to consent to a reevaluation and failed to bring the child to interviews.

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Case Law: IEP Development: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: IEP Development: Ruling Rationale

- 💧 Z.A.R. ex rel. E.J. v. City of New York, 81 IDELR 283 (E.D. N.Y. Sept. 27, 2022).
 - 💧 The District Court found procedural and substantive deficiencies in the student's IEP and that the private placement was appropriate.
 - 💧 It also concluded that the district was also at fault for failing to provide adequate notice of the IEP meeting and refusing to postpone it.
 - 💧 The Court also noted that the district proceeded to create and implement an IEP without the statutorily required teachers present, it observed.
 - 💧 However, the Court found that the parent was unreasonably uncooperative in refusing to consent to a reevaluation since the law allows for yearly reevaluations if the district determines them necessary.
 - 💧 The parent obstructed the district's attempts to create an IEP tailored to the student's capabilities.
 - 💧 The court awarded only 50 percent reimbursement.

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Case Law: IEP Development: Facts

- 💧 G.G. v. Conejo Unified Sch. Dist., 82 IDELR 27 (C.D. Cal. Nov. 2, 2022).
 - 💧 Parents argued that their son's IEP failed to address his issues with transitions, failed to include a behavior support plan, and failed to offer a private placement.
 - 💧 The only behaviors the student exhibited were hand sniffing and impulsive behaviors.
 - 💧 The school district argued that the student did not have issues with transitions, nor did he engage in any behavior that impeded his learning, and that the school district could implement the IEP appropriately in the public school setting.

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Case Law: IEP Development: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: IEP Development: Ruling Rationale

- 💧 G.G. v. Conejo Unified Sch. Dist., 82 IDELR 27 (C.D. Cal. Nov. 2, 2022).
 - 💧 The District Court upheld the ALJ's decision that the IEP was procedurally and substantively appropriate.
 - 💧 The Court explained that the district had no obligation to maximize the student's potential and met its obligations under the IDEA.
 - 💧 The district only needed to address the student's unique needs and developed an IEP that would allow him to receive an appropriate educational benefit to fulfill its obligations under the IDEA.
 - 💧 The Court noted that the IEP included goals for each identified area of need, including two goals relating to social skills deficits and there was no evidence the student had any difficulties with transitions that would suggest the need for an annual goal in that area.

51

Case Law: IEP Development: Facts

- 💧 T.S. v. Long Beach Unified Sch. Dist., 82 IDELR 136 (C.D. Cal. Dec. 13, 2022).
 - 💧 T.S. argued the lower court's decision should be reversed because "the District did not timely conclude T.S.'s 2020-21 IEP that began on February 18, 2020, leaving T.S. without an IEP for the start of the 2020-21 year."
 - 💧 T.S. claimed the District should have concluded his IEP team meeting prior to the beginning of the 2020-21 school year and that the failure to do so resulted in his unique needs going unaddressed, entitling him to comp. ed.
 - 💧 The District argued "the ALJ properly held that [T.S.'s] Annual IEP was timely concluded."
 - 💧 The District claimed it completed T.S.'s IEP in a timely manner, the IEP process reasonably took an extended time because of the numerous IEEs to be reviewed and schedules to coordinate, and the delay in completing the IEP did not deny T.S. a FAPE but rather ensured parental participation in the IEP process.

52

Case Law: IEP Development: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

53

Case Law: IEP Development: Ruling Rationale

- 💧 T.S. v. Long Beach Unified Sch. Dist., 82 IDELR 136 (C.D. Cal. Dec. 13, 2022).
 - 💧 Court upheld the ALJ's decision that T.S. failed to meet his burden to prove that the District did not timely conclude the February 2020 IEP process, or that the delay in completing the IEP denied T.S. a FAPE.
 - 💧 The Court reasoned:
 - 💧 The failure to complete an IEP before the annual deadline does not necessarily result in a denial of a FAPE.
 - 💧 The District held T.S.'s annual IEP meeting over five days, with each meeting lasting two hours before the team had to stop and reconvene at a later date.
 - 💧 Witness testimony supports that scheduling the IEP team meetings was difficult and the material to be covered extensive.
 - 💧 The IEP meeting minutes reflect that T.S.'s parents and their attorney participated in each IEP meeting by asking questions, raising concerns, and requesting revisions to the goals, so the additional time ensured and encouraged parental participation in the IEP process.

54

Case Law: IEP Development: Facts

- 💧 AAA v. Clark County Sch. Dist., 82 IDELR 94 (Nev., Nov. 30, 2022).
 - 💧 Parents of a second-grader with a hearing impairment and private diagnoses of autism and ADHD alleged procedural violations because her IEP was “expired.”
 - 💧 At the beginning of the 2018-19 school year, dissatisfied with AAA's academic progress in years prior and doubting the District's decision to change AAA's eligibility category, plaintiffs requested an independent educational evaluation (IEE) at the District's expense and filed a due process complaint. The district granted this request.
 - 💧 AAA's IEP was set to expire in November of 2018.
 - 💧 The district delayed the student's annual IEP review by an additional 122 days based on the parents' pending due process complaint.

55

Case Law: IEP Development: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

56

Case Law: IEP Development: Ruling Rationale

- 💧 AAA v. Clark County Sch. Dist., 82 IDELR 94 (Nev., Nov. 30, 2022).
- 💧 The District Court found no fault with the district's decision to hold off on the student's annual IEP review until the parents received the results of an independent educational evaluation.
- 💧 The Court reasoned that because the parents refused to participate in any IEP meetings until they had that information, the district's decision to prioritize the parents' participation over the review deadline was not unreasonable.

57

Least Restrictive Environment (LRE)



58

LRE Standard

💧 IDEA:

- 💧 To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling, or other removals of children with disabilities from the regular educational environment occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. 300.114(a).

59

Case Law: LRE: Facts

- 💧 J.P. v. Belton Sch. Dist. No. 124, 81 IDELR 124 (8th Cir. July 26, 2022).
 - 💧 J.P., a 9-year-old boy with severe disabilities made minimal progress towards his IEP goals, did not participate in activities with his nondisabled peers, and ate lunch in his classroom due to a tendency to become overwhelmed by sensory input.
 - 💧 As a result, the district sought to place J.P. in a more restrictive education setting.
 - 💧 Parent wanted her son to remain in the public-school special education classroom because she “was satisfied with J.P.’s progress towards the goals in his IEP.” Parent argued, “if J.P. needs additional services, the district should provide them in J.P.’s current placement.”
 - 💧 District argued that J.P. was not making adequate progress towards his IEP goals at the public-school and sought to transfer him to a private school for the “severely disabled” to ensure he is receiving a FAPE.
 - 💧 Parent filed suit alleging that transferring J.P. to the more restrictive placement for students with severe disabilities would violate his rights under the IDEA to be educated in the LRE.

60

Case Law: LRE: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

61

Case Law: LRE: Ruling Rationale

- 💧 J.P. v. Belton Sch. Dist. No. 124, 81 IDELR 124 (8th Cir. July 26, 2022).
 - 💧 The Circuit Court found in favor of the school district, reasoning that the evidence supported that J.P. was making little or no progress towards his IEP goals and would be better served in the district's proposed more restrictive environment.
 - 💧 The Court explained that while the special education class in public school setting is a less restrictive environment on the placement continuum, "the IDEA does not allow the school to sacrifice a student's access to a FAPE to have him in a more integrated setting."

62

Case Law: LRE: Facts

- 💧 G.T. by A.T. v. Campbell County Bd. of Educ., 81 IDELR 273 (E.D. Ky. Oct. 5, 2022).
 - 💧 Parent of an elementary student with down syndrome believed her son would benefit more with more time with his nondisabled peers because he enjoyed interacting with them.
 - 💧 The student's IEP placed him in a special education setting for 13.75 hour each week.
 - 💧 Parent argued that this was for behavioral reasons.
 - 💧 The IEP team considered parents suggestion but advocated that the student needed a learning environment with minimal noise and distraction due to feeling overwhelmed in the general education setting.
 - 💧 The IEP team also noted that the student struggled to understand instructions that were given in the general education setting and argument that a more restrictive setting was more appropriate in order to ensure G.T. made appropriate progress.

63

Case Law: LRE: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

64

Case Law: LRE: Ruling Rationale

- 💧 G.T. by A.T. v. Campbell County Bd. of Educ., 81 IDELR 273 (E.D. Ky. Oct. 5, 2022).
 - 💧 The District Court held that the school district offered the student FAPE in his LRE.
 - 💧 The Court noted that the student rarely had behavioral problems in the general education classroom and instead his difficulties stemmed from the noisy and distracting environment and his inability to understand directions.
 - 💧 Thus, the special education classroom was "more conducive" to providing the specially tailored instruction the student required to make appropriate progress. "
 - 💧 The student had opportunities to interact with nondisabled peers when he was not receiving special education services.
 - 💧 The court thus held that the district appropriately balanced the student's academic needs with its duty to provide FAPE in the LRE.

65

Case Law: LRE: Facts

- 💧 Yeger ex rel. J.Y. v. East Ramapo Cent. Sch. Dist., 82 IDELR 24 (S.D. N.Y., Nov. 7, 2022).
 - 💧 Parents claim their high school student with autism needed a residential placement to receive FAPE.
 - 💧 The district offered an 8:1:1 therapeutic placement in a public high school.
 - 💧 Parents rejected the proposed placement and IEP and enrolled J.Y. in an out of state residential program.
 - 💧 The district argued that student regressed in the private placement and that it could serve the student in public school by including small group counseling session, breaks, transition supports, summer school services, and parent counseling.

66

Case Law: LRE: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

67

Case Law: LRE: Ruling Rationale

- 💧 Yeger ex rel. J.Y. v. East Ramapo Cent. Sch. Dist., 82 IDELR 24 (S.D. N.Y., Nov. 7, 2022).
 - 💧 The District Court upheld the SRO's decision in favor of the district, finding that the district offered FAPE in the LRE.
 - 💧 The Court reasoned the following:
 - 💧 J.Y. had increased behavioral issues while attended the parents' private day program, and often became frustrated and refused to follow directions.
 - 💧 After the J.Y. regressed in the private setting, the district increased its proposed services and supports.
 - 💧 Thus, the Court held that the proposed 12th-grade IEP offered the supports the student required while allowing him to remain in his community, the court held that the proposed placement was the student's LRE.

68

Case Law: LRE: Facts

- 💧 D.R. by R.R. v. Redondo Beach Unified Sch. Dist., 82 IDELR 77 (9th Cir. Dec. 20, 2022).
 - 💧 The parents argued D.R., should primarily be educated in a regular classroom with his non-disabled peers.
 - 💧 The team agreed that D.R. had met four of his six academic goals for the fourth-grade year, and that he had made progress on the remaining two.
 - 💧 However, he was several grade levels below his non-disabled peers in language arts and math and spent most of his time in the regular classroom working 1:1 with his aide on assignments that were tied to a heavily modified general education curriculum.
 - 💧 To provide D.R. with greater individualized attention and a curriculum geared toward his particular needs, school officials proposed placing him in the Special Day Class for 56% of the school day.
 - 💧 D.R.'s parents terminated the IEP meeting and removed D.R. from the school. After trying unsuccessfully to find a private school that would accept D.R., they hired a private instructor to teach him in a one-on-one educational program.

69

Case Law: LRE: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

70

Case Law: LRE: Ruling Rationale

- 💧 D.R. by R.R. v. Redondo Beach Unified Sch. Dist., 82 IDELR 77 (9th Cir. Dec. 20, 2022).
 - 💧 The Circuit Court held the IDEA supports the parents' position, but the parents were not entitled to reimbursement for the expenses they incurred after unilaterally removing their son from school and hiring a private instructor to educate him in a one-on-one setting.
 - 💧 The Court found that the IEP proposed by the school district before D.R.'s fifth-grade year violated the IDEA.
 - 💧 By requiring him to spend 56% of the school day in a special education classroom, the proposed IEP failed to offer D.R. FAPE in the LRE

71

Behavior & FBAs/BIPs



72

Case Law: Behavior and BIPs: Facts

- 💧 Alex W. v. Poudre Sch. Dist. R-1, 81 IDELR 133 (D.C. Col. July 15, 2022).
 - 💧 Alex attended the district from 2014 until 2018 and qualified for special education and related services under the IDEA due to significant disabilities, including Down Syndrome, autism, and hearing and vision impairments.
 - 💧 Parents obtained private evaluation prior to Alex's enrollment in District.
 - 💧 Parents contend that all of Alex's IEPs fell short of IDEA requirements.
 - 💧 Specifically:
 - 💧 (1) the District failed "to assess and appropriately address behaviors that impeded Alex's learning"
 - 💧 (2) Alex "made minimal educational progress and his functional skills declined"
 - 💧 (3) District failed to evaluate in all areas of IEP
 - 💧 (4) 2017 IEP improperly reduced the time Alex spent in one-on-one speech-language therapy and occupational therapy
 - 💧 (5) incorrectly determined that Alex was not eligible for extended school year services
 - 💧 Parents also contend district violated IDEA when refused to provide IEE in 2018
 - 💧 District argued only sought to create evident for Due Process

73

Case Law: Behavior and BIPs: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

74

Case Law: Behavior and BIPs: Ruling Rationale

- 💧 Alex W. v. Poudre Sch. Dist. R-1, 81 IDELR 133 (D.C. Col. July 15, 2022).
 - 💧 The district court held:
 - 💧 The IEPs were appropriate under the IDEA.
 - 💧 The district offered the student FAPE.
 - 💧 The district was required to reimburse the parents for an independent educational evaluation.
 - 💧 Did not file DP to defend
 - 💧 All of the child's IEPs included ABA therapies and provided him the opportunity to interact with nondisabled peers, both of which were recommended by the child's private psychologist in an IEE.

75

Case Law: Behavior: Facts

- 💧 Smith v. Orcutt Union Sch. Dist., 81 IDELR 153 (9th Cir. Aug. 10, 2022).
 - 💧 Smith is the mother of O.A., a 10-year-old boy with autism.
 - 💧 O.A. struggled with significant behavioral issues that at times has required him to be accompanied throughout the school day by one-to-one aides who would monitor his safety.
 - 💧 He received ABA therapy as part of the treatment for his autism.
 - 💧 O.A.'s mother requested that his school allow outside ABA therapists to accompany him during the school day, but the district denied the request.
 - 💧 O.A.'s mother, subsequently filed suit, alleging that the district violated his rights under Title II of the ADA and Section 504 by failing to accommodate his outside ABA therapists and therefore denying him access to an education.

76

Case Law: Behavior: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

77

Case Law: Behavior: Ruling Rationale

- 💧 Smith v. Orcutt Union Sch. Dist., 81 IDELR 153 (9th Cir. Aug. 10, 2022).
 - 💧 The Circuit Court ruled in favor of the district because the parent failed to show how O.A.'s significant behavior issues kept him from accessing education or how ABA therapy would help.
 - 💧 There was no evidence of the extent to which O.A.'s behavioral issues affected his ability to remain in the classroom and participate in instruction, how often he would elope, soil himself, or be removed because of other behavioral problems, or how much class time he missed during each incident.
 - 💧 The Court noted that expert testimony didn't mention the child's specific needs and didn't opine that ABA therapy was universally necessary for children with autism to meaningful access instruction or that the child required it.
 - 💧 The Court explained that “despite that ABA therapy is medically necessary for the child, it was not enough to establish that it was necessary for him to access his education.”

78

Procedural/Parental Participation



79

Case Law: Parent Participation: Facts

- 💧 C.D. v. Northshore Sch. Dist., 81 IDELR 154 (9th Cir. Aug. 3, 2022).
 - 💧 Parent alleged they needed physical copies of testing protocols to meaningfully participate in the eligibility meeting.
 - 💧 Parents claimed the district violated the IDEA by failing to develop their son's initial IEP in their absence.
 - 💧 Parents declined to participate in an IDEA eligibility meeting unless the district gave them physical copies of their son's assessments.
 - 💧 The district offered to give the parents additional time to review those testing protocols and to make the school psychologist available to interpret and explain the results.
 - 💧 Parents have not challenged the District's explanation that it could not provide physical copies to Parents as requested because the test materials had copyright protections.

80

Case Law: Parent Participation: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

81

Case Law: Parent Participation: Ruling Rationale

- 💧 C.D. v. Northshore Sch. Dist., 81 IDELR 154 (9th Cir. Aug. 3, 2022).
 - 💧 The Circuit Court held that neither the district's refusal to provide parents with physical copies of testing protocols nor its decision to hold off on IEP development until the parents agreed to participate in the process amounted to a denial of FAPE.
 - 💧 The Court explained the IDEA does not require the district to provide physical copies of the assessments, the district only had to give the parents the opportunity to inspect and review those records, which it did.
 - 💧 The Court further explained that the IDEA does not require the district to proceed with an IEP meeting if the parents refused to participate.

82

Case Law: Predetermination: Facts

- 💧 C.M. v. Rutherford County Schools, 80 IDELR 239 (M.D. Tenn. March. 30, 2022).
 - 💧 Parent of student with ADHD and dyslexia alleged that the district predetermined program methodologies and accommodations which allegedly prevent her from being able to meaningfully participate in the drafting of the IEP.
 - 💧 After C.M.'s 6th grade year he transferred from Murfreesboro City Schools, where he used the Wilson program to Whitworth Buchanan Middle School.
 - 💧 Prior to the first IEP meeting In August of 2018, C.M.'s mother (B.M.) sent the sped teacher an email from C.M.'s doctor asserting C.M. should continue to receive instruction pursuant to the Wilson program; and C.M. had studied under the Wilson program for several years, completing approximately 75% of it.
 - 💧 Subsequently but still prior to the meeting, the sped teacher had C.M. take the Language! placement test to assess where C.M. should start and which class he would be in.
 - 💧 At the initial IEP meeting, the sped teacher brought a previously drafted IEP that removed all but eight of the thirty accommodations that had been provided at MCS and did not include the Wilson program that B.M. preferred.
 - 💧 As a result, parents filed a due process complaint alleging that RCS failed to provide a FAPE to C.M. and requesting that RCS be ordered to provide C.M. with reading instruction pursuant to Wilson until all 12 steps of the program were completed.

83

Case Law: Predetermination: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

84

Case Law: Predetermination: Ruling Rationale

- 💧 C.M. v. Rutherford County Schools, 80 IDELR 239 (M.D. Tenn. March. 30, 2022).
 - 💧 The District Court found that C.M. was not deprived of the "services" his parents requested. The Court explained that B.M. requested that RCS provide C.M. with "intensive, explicit, systematic and cumulative, structured, multi-sensory and language-based" reading intervention services, with her clear choice being Wilson; and the administrative record showed that Language! and Wilson are comparable programs.
 - 💧 Both are structured reading programs that are designed to improve upon a student's weaknesses in reading, but use different assessments to determine the same reading skills.
 - 💧 Acknowledging that both parties had their own preference of programs, even still, at the meeting B.M. had an advocate with her and the record established that the methodologies and the use of Language! versus Wilson were discussed at the meetings, as was the fact that C.M.'s special education teacher had training in Language!.
 - 💧 The Court concluded, "where the procedural requirement of the IDEA regarding the formulation of an IEP are met, Plaintiffs are not entitled to prescribe or require a specific desired methodology."
 - 💧 The Court also found that C.M.'s accommodations were NOT predetermined, and that B.M. was NOT deprived of her right to meaningfully participate in the crafting of the final IEP. In fact, the draft IEP was changed as a result of her suggestions.
 - 💧 The court explained that school evaluators may prepare reports and come with pre-formed opinions, and in fact, "Tennessee regulations require an assessment team to evaluate a student's eligibility and prepare an assessment report prior to the IEP Team meeting."

85

Case Law: Parent Participation: Facts

- 💧 A.W. and M.W. v. Loudon County Sch. Dist., 81 IDELR 281 (E.D. Tenn. Sept. 28, 2022).
 - 💧 Parents of a fifteen-year-old girl with ADHD, ODD, and intellectual disability filed for due process alleging that the district significantly impeded the parent's ability to meaningfully participate in the IEP process by failing to inform her that a teacher did not have a special education endorsement.
 - 💧 The district argued that the teacher's endorsement or lack thereof did not affect the level of services the student received.
 - 💧 The district also contended that the teacher was newly hired and assumed he would obtain the provisional special education endorsement.

86

Case Law: Parent Participation: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

87

Case Law: Parent Participation: Ruling Rationale

- 💧 A.W. and M.W. v. Loudon County Sch. Dist., 81 IDELR 281 (E.D. Tenn. Sept. 28, 2022).
 - 💧 The District Court found that the district impeded parents right to participate in the IEP process when it withheld information regarding the teachers lack of special education endorsements.
 - 💧 Reasoning that “the district held [the teacher] out as a credentialed special-education teacher, depriving [the parent] of the opportunity to raise the issue of whether [the teacher] should provide [the student's] special-education instruction.
 - 💧 The Court upheld the ALJ’s order requiring the district to train staff on hiring requirements and the decision that comp. ed. was unwarranted.

88

Case Law: Parent Participation: Facts

- 💧 Guevara v. Chaffey Joint Union High Sch. Dist., 81 IDELR 277 (C.D. Cal. Sept. 29, 2022).
 - 💧 Parents of a 17-year-old boy filed due process alleging that the district denied them FAPE by excluding their representatives from an IEP meeting in 2019.
 - 💧 The district argued that once parents and their attorney, who were attending the IEP meeting via telephone, were disconnected from the meeting the district attempted to get in touch with them before continuing the meeting.
 - 💧 The district also argued that the parents' attorney intentionally hung up the phone.
 - 💧 The district continued the meeting without the parents or their attorney.

89

Case Law: Parent Participation: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

90

Case Law: Parent Participation: Ruling Rationale

- 💧 Guevara v. Chaffey Joint Union High Sch. Dist., 81 IDELR 277 (C.D. Cal. Sept. 29, 2022).
 - 💧 The District Court upheld the ALJ's decision that the district complied with the IDEA requirements in affording the parents the opportunity to participate in the IEP process, reasoning that the parents failed to rebut any evidence that their attorney intentionally hung up the phone.
 - 💧 The Court found that the district acted reasonably in response to the parents and their attorney becoming disconnected from the meeting.
 - 💧 The district made several attempts to reconnect with the attorney and the parents, confirmed that the school's phone system was functioning properly, and waited a reasonable amount of time before deciding to continue.

91

Case Law: Parent Participation: Facts

- 💧 San Jose Unified Sch. Dist. v. H.T. by T.A., 82 IDELR 37 (N.D. Cal. Oct. 21, 2022).
 - 💧 The school district filed a due process request to contest a parent's request for an IEE at public expense.
 - 💧 The father of a sixth-grade student with autism and a speech impairment alleged the school district repeatedly decided to not call the student's father during an FBA and failed to incorporate the father's input into the FBA, thus disagreeing with the eval.
 - 💧 The district argued it attempted to obtain the father's input and left a voicemail regarding such.
 - 💧 Father responded via email stating that he did not want to share information with the BCBA conducting the FBA at that time.

92

Case Law: Parent Participation: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

93

Case Law: Parent Participation: Ruling Rationale

- 💧 San Jose Unified Sch. Dist. v. H.T. by T.A., 82 IDELR 37 (N.D. Cal. Oct. 21, 2022).
 - 💧 The District Court affirmed the ALJ's decision in favor of the parent holding that the district erred when it failed to obtain input from the father of the student.
 - 💧 The Court held that the district failed to prove its FBA was appropriate and found that the district violated the IDEA, and father was entitled to a publicly funded independent educational evaluation.
 - 💧 The Court explained that "the district gave up on obtaining the father's input too easily" and unreasonably assumed that he did not want to be involved in the FBA.

94

Case Law: Parent Participation: Facts

- 💧 Wade v. District of Columbia, 82 IDELR 92 (D.C. Dec. 7, 2022).
 - 💧 Parents of L.W. claim that the districts failure to provide prior written notice of L.W.'s diploma track and graduation violated their substantive rights by impeding on their opportunity to meaningfully participate in the IEP meeting.
 - 💧 Parents also alleged that the district did not attend the meeting with an open mind about an alternative graduation track.
 - 💧 Plaintiffs argued that the school in which L.W. was placed only offered a diploma track.
 - 💧 The parent also asserted “that [she] was unaware of the certificate track and the opportunity to advocate for it, so she was denied meaningful participation.”

95

Case Law: Parent Participation: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

96

Case Law: Parent Participation: Ruling Rationale

- 💧 Wade v. District of Columbia, 82 IDELR 92 (D.C. Dec. 7, 2022).
 - 💧 The District Court found that although the district did not provide a PWN of L.W.'s diploma track placement and subsequent graduation, such failure did not affect L.W.'s substantive rights by significantly impeding the parent's opportunity to participate.
 - 💧 The Court noted that the parent "was no novice to the IEP Process," and the district held several IEP meetings in which the parent participated and often had counsel or advocates present.
 - 💧 The Court explained that the fact that the school in which L.W. was placed only offered a diploma track is not tantamount to lacking an "open mind," and it does not reflect an unwillingness to listen.
 - 💧 Additionally, the Court noted that "Ms. Wade offer[ed] no evidence that she tried to pursue the certificate track for L.W. but was rebuffed."

97

Private School/Residential Placement



98

Case Law: Residential Placement: Facts

- 💧 Doe v. Newton Pub. Schs., 122 LRP 30969 (1st Cir. Sept. 2, 2022).
 - 💧 Parent unilaterally placed her high school Student with Autism and Depression in a residential placement.
 - 💧 The district argued it could provide the services that the student was receiving at the residential placement.
 - 💧 Parents refused the district's proposed IEPs and sought reimbursement for the costs that they incurred in sending the student to a private residential school out of the state.

99

Case Law: Residential Placement: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

100

Case Law: Residential Placement: Ruling Rationale

- 💧 Doe v. Newton Pub. Schs., 122 LRP 30969 (1st Cir. Sept. 2, 2022).
 - 💧 The Circuit Court found that Student did not need a placement at a residential school to receive a FAPE
 - 💧 Does developed no argument that there was no nonresidential alternative where he could receive the kind of therapeutic schooling that that he required.
 - 💧 Thus, after considering the “reasonableness of the parents’ decision to place the student in a residential program,” the Court held that the parents were not entitled to reimbursement for boarding or travel expenses but could recover tuition payments for the student’s 11th- and 12th-grade years.
 - 💧 The Court acknowledge the long-standing rule that a student is not entitled to a residential placement if he can receive FAPE in a day program.
 - 💧 However, the Court explained, “the restrictiveness of the unilateral placement did not in itself bar the parents’ reimbursement claim” and “the IDEA’s reimbursement provision contemplates that the district is responsible only for those expenses it should have paid all along.”

101

Case Law: Private Placement: Facts

- 💧 S.B. and K.B. ex rel. K.B. v. Goshen Cent. Sch. Dist., 81 IDELR 259 (S.D.N.Y., Sept. 12, 2022).
 - 💧 Parent of a middle schooler with anxiety and specific learning disabilities sought to recover costs for Student’s unilateral private placement.
 - 💧 Parent unilaterally placed student in a private school after the school district failed to make the student eligible for IDEA services.
 - 💧 The district argued that student could be served in the public school and pointed to evidence of her overall success in the classroom despite some difficulties with math and auditory processing.

102

Case Law: Private Placement: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

103

Case Law: Private Placement: Ruling Rationale

- 💧 S.B. and K.B. ex rel. K.B. v. Goshen Cent. Sch. Dist., 81 IDELR 259 (S.D. N.Y., Sept. 12, 2022).
 - 💧 The District Court upheld the SRO's decision that the student was ineligible for IDEA services and noted that the student's impairment did not adversely affect her educational performance.
 - 💧 The Court explained that the fact that a student performs better in some classes than others does not in itself establish a need for special education.
 - 💧 The Court reasoned that the student excelled in numerous subjects, maintained an overall grade average in the high 80s, performed at or above average on standardized assessments, and received positive reviews from her teachers.
 - 💧 Although the student earned slightly lower grades in math and language arts, those areas of weakness alone did not establish a need for IDEA services.

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Case Law: Private Placement: Facts

- 💧 Steckelberg ex rel. AMS v. Chamberlain Sch. Dist., 82 IDELR 55 (S.D. Nov. 30, 2022).
 - 💧 AMS was a high school special education student with autoimmune disorder, PANS/PANDA, OCD, Tourette's and random tic disorders.
 - 💧 The parents alleged that AMS's placement at the Kaizen Academy in Utah for therapy and a standard education should be paid for by the School District.
 - 💧 The School District argued that the focus of the Kaizen Academy is on counseling and treatment of sexual dysfunction rather than education, and thus not a proper placement for AMS under the IDEA.
 - 💧 In the underlying case the hearing officer found in favor of the plaintiffs and ordered the district to reimburse the Steckelbergs for tuition and traveling expenses to Utah.
 - 💧 On appeal the district asked the Court to reverse the administrative decision requiring it to pay for travel expenses and AMS's placement at the Kaizen Academy.

105

Case Law: Private Placement: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

106

Case Law: Private Placement: Ruling Rationale

- 💧 Steckelberg ex rel. AMS v. Chamberlain Sch. Dist., 82 IDELR 55 (S.D. Nov. 30, 2022).
 - 💧 The District Court upheld the administrative decision awarding tuition reimbursement and travel expenses because the district denied the student a FAPE because his behaviors impeded his learning.
 - 💧 The Court found the private placement to be appropriate because despite research by both parties, neither party found any other options for placement for him.
 - 💧 The Court held that the record contains the evidence necessary to calculate the appropriate amount of reimbursement for tuition at the Kaizen Academy in the amount of \$90,375 and travel expenses in the amount of \$9,221.52.

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Section 504, ADA, & Other Related Laws



108

Case Law: 504/ADA: Facts

- 💧 Johnson v. Tomball Indep. Sch. Dist., 81 IDELR 78 (S.D.Tex. Mar. 31, 2022).
- 💧 Parent requested that O.J.'s private ABA providers be allowed to attend kindergarten with him, but district denied request.
- 💧 District proposed IEP with supports/accommodations but continued to refuse private providers access to school.
- 💧 Parent withdrew request for IEP but requested Section 504 plan. District proposed Section 504 plan which allowed private ABA providers to attend school with student during a transition period (until Sept. 10) when the district's BCBA and paraprofessional (who would be RBT) would provide in-class services.
- 💧 Parent claimed district acted with deliberate indifference to O.J.'s disability by denying his private ABA therapy providers access to the school.
- 💧 Bypassed due process hearing, filed discrimination claim in federal court. District filed a motion to dismiss due to failure to exhaust administrative remedies.

109

Case Law: 504/ADA: Holding

- 💧 You be the judge:
 - 💧 A) Case Dismissed
 - 💧 B) Case Not Dismissed

110

Case Law: 504/ADA: Ruling Rationale

- 💧 Johnson v. Tomball Indep. Sch. Dist., 81 IDELR 78 (S.D.Tex. Mar. 31, 2022).
 - 💧 Case hinged on whether the claims seek relief for a denial of FAPE
 - 💧 Court held that exhaustion was NOT required! The Court's rationale was as follows:
 - 💧 O.J. could have brought the same claims against a public facility (such as a library or public theater).
 - 💧 Similar to case where a museum violating the ADA by requiring a disabled person to pay admission of his employed personal care assistant.
 - 💧 Like O.J., the personal care assistant was "medically necessary."
 - 💧 An adult could have brought the same claim
 - 💧 For example, an adult could allege that they could not access a PTA meeting on school grounds if they could not bring their ADA provider.

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Case Law: Exhaustion: Facts

- 💧 Board of Educ. of the City of New Haven v. Commission on Human Rights and Opportunities, 81 IDELR 231, (Conn. S. Ct., Sept. 6, 2022).
 - 💧 Parent of a student with autism alleged claims of disability discrimination after the school district unilaterally withdrew the student from his magnet school after missing several days of school due to a concussion.
 - 💧 The district argued that the parent failed to exhaust his administrative remedies.
 - 💧 The district also argued that the timing of the withdrawal, which occurred right after a team meeting to discuss the child's eligibility for IDEA services, turned the dispute into a special education matter.

112

Case Law: Exhaustion: Holding

- 💧 You be the judge:
 - 💧 A) Case Dismissed
 - 💧 B) Case Not Dismissed

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Case Law: Exhaustion: Ruling Rationale

- 💧 Board of Educ. of the City of New Haven v. Commission on Human Rights and Opportunities, 81 IDELR 231, (Conn. S. Ct., Sept. 6, 2022).
 - 💧 The Court upheld the trial court ruling that the parent was not seeking relief for a denial of FAPE.
 - 💧 The Court explained that “the parent's state law discrimination claims did not relate to the student's identification, evaluation, placement, or services,”
 - 💧 rather, the parent had claimed the district discriminated against the child by withdrawing him from the school after he suffered a concussion.

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Case Law: Procedural: Facts

- 💧 Doe v. K.M. and A.M. v. Knox County Bd. of Educ., 82 IDELR 103, (6th Cir. Jan. 4, 2023).
 - 💧 9th grade student allegedly has "misophonia" which manifests as "an extreme reaction to hearing normal sounds of eating gum and chewing food."
 - 💧 Misophonia is a disorder of decreased tolerance to specific sounds or their associated stimuli.
 - 💧 Claims she is missing approximately half her educational time leaving the classroom to escape the sound of eating and chewing gum by other students in the classroom.
 - 💧 Plaintiff seeks a ban on eating and chewing in all her academic classes (and a lunch period activity),
 - 💧 Filed discrimination claim in federal court. District filed a motion to dismiss due to failure to exhaust administrative remedies.
 - 💧 The District Court found in favor of the school district, parents appealed.

115

Case Law: Procedural: Holding

- 💧 You be the judge:
 - 💧 A) Case Dismissed
 - 💧 B) Case Not Dismissed

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Case Law: Procedural: Ruling Rationale

- 💧 Doe v. K.M. and A.M. v. Knox County Bd. of Educ., 82 IDELR 103, (6th Cir. Jan. 4, 2023).
 - 💧 Case hinged on whether the claims seek relief for a denial of FAPE.
 - 💧 Court held that the request to accommodate the student by banning eating food and chewing gum in classrooms had no connection to the provision of FAPE as defined by the IDEA. The Court's rationale was as follows:
 - 💧 Because the IDEA defines "'special education' as 'specially designed instruction' the request for FAPE must involve a request for specialized instruction."
 - 💧 In other words, "a change to the content, methodology, or delivery of the instruction."
 - 💧 The 6th Circuit further explained that such a ban would not be described as "specially designed instruction...because there is nothing innately instructional about the ban."
 - 💧 The Court reversed the district court's ruling that dismissed the parents Section 504 and ADA claims and remanded the case for the district court to consider the parents' request for a preliminary injunction.

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Case Law: Bullying Investigation: Facts

- 💧 Doe v. Nelsonville-York Sch. Dist. Bd. of Educ., 81 IDELR 45 (S.D. Ohio May 16, 2022).
 - 💧 Two unrelated students, R.S. and N.F., from the same school district sued the district claiming they were bullied because of their disability.
 - 💧 R.S. 16-year-old female with ADHD, Mild Intellectual Disability, Depressive Disorder, and Anxiety.
 - 💧 A student called R.S. "retarded" multiple times, yelling at her, and on one occasion punched her in the face multiple times. The student was suspended from the bus the following school day, was given a 10-day out-of-school suspension, and was later expelled from the bus the remainder of the school year.
 - 💧 N.F. elementary male student with ciliary dyskinesia and a genetic disorder which causes mental and physical delays.
 - 💧 N.F. was allegedly bullied at school and suffered a serious head injury, a broken arm, and often came home with black eyes and the school failed to do anything about it.
 - 💧 In first grade N.F. broke his arm at recess and a staff member took him to the nurse as soon as she realized N.F. was injured. When a first grader pushed N.F. and caused him to hit his head against a wall, a staff member disciplined the student, in another incident where N.F. and a student were hitting each other, they both were disciplined.
 - 💧 As a result of N.F. injuries his father asked for a personal aid and the school principal thereafter assigned a personal aid to accompany N.F.
 - 💧 However, the personal aid was not provided in second grade due to expense and N.F.'s father argues this was the reason N.F. received multiple injuries during his second-grade year, including a black eye and a concussion that has caused permanent injuries.

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Case Law: Bullying Investigation: Holding

- 💧 You be the judge:
 - 💧 A) For the Parent
 - 💧 B) For the District
 - 💧 C) Split Decision

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Case Law: Bullying Investigation: Ruling Rationale

- 💧 Doe v. Nelsonville-York Sch. Dist. Bd. of Educ., 81 IDELR 45 (S.D. Ohio May 16, 2022).
 - 💧 The District court found in favor of the school district for both student's claims.
 - 💧 R.S. – The District Court found R.S.'s descriptions of the bullying to be vague and other than name calling only points to one incident of harassment.
 - 💧 As it relates to the one incident R.S. complained of that occurred on the school, the Court concluded that no reasonable jury could find that the school's response was clearly unreasonable in light of known circumstances.
 - 💧 N.F. – The Court ruled in favor of the district because the record proved that the school immediately responded to each injury in a manner that was proportionate with that student's conduct and was not clearly unreasonable.
 - 💧 The Court reasoned that "there is no evidence that students injured N.F. again after the student was disciplined;" and "although N.F. was repeatedly injured on the playground, the district responded immediately, conducted an investigation, and imposed measures."
 - 💧 The Court explained that Schools are not liable for failing to act in a specific way unless failure to do so was "clearly unreasonable in light of known circumstances."

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Thank you!

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