The Year's Top Special Education Cases

ConnCASE March 2019 Legal Issues Conference

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Agenda

- 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
- Retaliation

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Free Appropriate Public Education (FAPE)

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.

Slow Progress Provided FAPE

- **Johnson v. Boston Pub. Schs. et. al., 73 IDELR 31 (1st Cir. Oct. 12, 2018).**
  - The slow linguistic progress of a student with a severe hearing impairment was enough to show meaningful progress for FAPE.
  - The 1st Circuit held that its "meaningful educational benefit" standard did not conflict with *Endrew F.'s* requirement that an IEP be reasonably calculated to enable a child to make progress in light of the his circumstances.
  - Furthermore, the 1st Circuit explained that "slow progress" does not necessary mean that the student did not receive meaningful benefit.
  - "Instead, the relationship between speed of advancement and the educational benefit must be viewed in light of a child's individual circumstances."
  - In this case, considering that the child had gone from "substantial inability to communicate or understand spoken or signed language to gradually signing, vocalizing, and demonstrating comprehension of other linguistic concepts" and the parent was resistant to the educational program, the child's speed was appropriate in light of his individual circumstances.

Repeat of Annual Goals did not Deny FAPE

- **K.D. v. Downingtown Area Sch. Dist., 72 IDELR 261 (3d Cir. 2018).**
  - Despite the fact that the IEP team carried over several annuals goals for two successive IEPs for a student with ADHD and SLDs, her progress was appropriate in light of her circumstances.
  - The 3d Circuit held that their standard of "meaningful benefit" aligned with the new *Endrew F.* standard.
  - Based on the fact that the student had significant deficits in reading, writing, and math, her baseline skills increased over the IEPs, and the district had changed her programing several times, the Court held that she was not denied FAPE.
- **See also J.B. v. Dist. of Columbia, 72 IDELR 274 (D.D.C. 2018).**

FAPE to Private School Student

- **Lincoln Sch. Dist. v. Rhode Island Counsel on Elem. and Secondary Educ. and D. Doe, 73 IDELR 184 (R.I. Sup. Ct. Dec. 21, 2018).**
  - Although parentally placed school students do not have a right to FAPE under the IDEA, state law can provide more rights for parentally placed private school students
  - Under Rhode Island state law, a parentally placed private school student was entitled to receive a teacher of the deaf during all academic instruction
  - Even though publically placed students only received services from a teacher of the deaf at a centralized program, the legislative intent of Rhode Island's state law was for parentally placed private school students to have access to special education services at their parentally chosen private school.

Child Find, Evaluations, & Eligibility

Hospitalization Provided Notice of Suspected Disability

- **Krawietz v. Galveston Indep. Sch. Dist., 118 LRP 33959 (5th Cir. Aug. 17, 2018).**
  - A district overlooked signs of a disability under IDEA when it waited approximately six months after a high school student was hospitalized to evaluate her for special education.
  - The student was on a 504 plan, which was successful her freshman year.
  - However, the following year she experienced deteriorating academic and behavioral problems and was hospitalized following an incident where she stole from her mother via unauthorized online purchases.
  - Approximately six months later, the parent filed due process and requested an evaluation under IDEA. The district evaluated the student and made her eligible for special education, but the court found it should have suspected a disability approximately six months earlier.

Low Standardized Test Scores Provided Notice of Suspected Disability

- **Z.J. and L.C-W. v. Bd. of Educ. of the City of Chicago, Dist. No. 299 et. al., 73 IDELR 95 (N.D. Ill. Sept. 26, 2018).**
  - The fact that a student consistently performed below grade level on standardized assessments should have put the district on notice of a suspected disability under IDEA.
    - The student scored below grade level on 6 consecutive math tests during her 5th and 6th grade years. The student's scores in 5th grade fell at the 12th, 15th, and 14th percentiles.
  - According to district policy, a student must score at or above the 24th percentile in 6th grade to be promoted to 7th grade.
  - Due to the district's reliance on these scores, it could not argue they weren't sufficient to establish a suspected disability.
  - The Court held that the district violated child find by not evaluating the student after the second below grade level assessment.

Continuing Student in RTI for 16 Months Violated Child Find

- **Avaras v. Clarkstown Central Sch. Dist. et. al., 73 IDELR 50 (S.D.N.Y. Sept. 28, 2018).**
  - A student's minimal progress for 16 months in an RTI program denied the student FAPE.
  - The student participated in Tier 1 & 2 interventions for the last 7 months of kindergarten with minimal progress.
  - For 1st grade, the district implemented Tier 3 interventions for nine months, despite the fact that the district typically referred students for an evaluation after 8 weeks of unsuccessful Tier 3 interventions.
  - The Court held that the child find violation caused the child to go without special education services for the entirety of his 1st grade year.

No Child Find Violation

- **M.G. v. Williamson County Schools, 71 IDELR 102 (6th Cir. 2018).**
  - District conducted a comprehensive IDEA eligibility evaluation when student entered Pre-K and child did not meet eligibility criteria for special education.
  - Child struggled academically and developmentally during the next year in kindergarten and the district provided multiple accommodations and interventions.
  - Child made tremendous gains but was recommended to repeat kindergarten to "catch up."
  - Student began having behavior issues in her second year of kindergarten, and district identified her as a 504-eligible student.
  - District also proposed a second IDEA eligibility evaluation, but parents withdrew child from public school before the evaluation could be completed.
  - Court held the district complied with the procedural and substantive requirements of the IDEA and Section 504.

Delay in Autism Evaluation for Student w/ED Denied FAPE

- **D.O. v. Escondido Union Sch. Dist., 73 IDELR 180 (S.D. Cal. Dec. 17, 2018).**
  - The therapist of a 10-year old student with an emotional disturbance and ADHD informed the student's IEP team that the she had evaluated the student and he appeared to meet the criteria for ASD.
  - The district did not conduct an assessment for autism until 4 months later.
  - The Court held that the 4 month delay resulted in a denial of FAPE because the student was likely deprived of educational benefits due to the lack of evaluation information about the student's capabilities as a student with autism (remanding the case to the administrative law judge).

Assistive Technology Evaluation Delay was Justifiable

- **E.F. v. Newport Mesa Unified Sch. Dist., 65 IDELR 265 (C.D. Cal. 2015), aff'd 69 IDELR 206 (9th Cir. 2017), cert. granted, judgment vacated sub nom 117 LRP 42131 (U.S.), aff'd sub nom 71 IDELR 161 (9th Cir. 2018).**
  - A district's decision to delay an assistive technology evaluation for a nonverbal preschool boy was justifiable considering his difficulty in learning a picture-exchange communication system.
  - However, the district should have conducted an AT assessment during the boy's kindergarten school year after his parents reported that he was proficient in using a tablet at home.

Student with ADHD's Success for 3 Years Supported IEP Team's Decision

- **Durbrow v. Cobb County Sch. Dist., 72 IDELR 1 (11th Cir. 2018).**
  - A twelve-grader with ADHD was not in need of special education and related services when his ADHD did not impede his academic performance during the first three-years of high school in a high-achieving academic magnet school.
  - The court held that the student's neglect of his studies (failure to complete homework or take advantage of his 504 accommodations) was the reason for his poor performance, not a disability under the IDEA.

Disability Category Immaterial

- **Bentonville Sch. Dist. v. Lisa Smith, 73 IDELR 203 (W.D. Ala. Jan. 23, 2019).**
  - A district did not deny a student FAPE by changing his disability from autism to emotional disturbance.
  - Despite the parent's claims to the contrary, the student's IEP was still reasonably calculated to provide an educational benefit.
  - The student received the same interventions and behavioral supports that the child had received under the category of Autism, and special education services continued to reduce the student's behavioral issues.
  - "The particular disability diagnosis affixed to a child in an IEP will, in many cases, be substantively immaterial because the IEP will be tailored to the child's specific needs."

No Disability Under IDEA for Handwriting Difficulties

- **R.Z.C. v. north Shore Sch. Dist., 73 IDELR 139 (9th Cir. 2018).**
  - A court upheld an administrative law judge's conclusion that a student with handwriting, spelling, grammar, and punctuation difficulties did not meet the eligibility criteria for an SLD under the IDEA.
  - Furthermore, the court held that the district did not violate the IDEA by failing to inform the parent via PWN that it did rejected the private evaluator's conclusions when obtaining consent for the reevaluation.
    - The team had not rejected the private evaluator's conclusions when it had not yet determined whether the student needed special education services.

IEP Development & Implementation

Progress Reports to Parents Establish FAPE

- **Oskowis v. Sedona-Oak Creed Unified School District #9, 75 IDELR 226 (D.Ariz. February 19, 2019).**
  - Parents' acknowledgment of receiving three progress reports from the district during the school year demonstrated that the district was monitoring the student's progress.
  - Parents also alleged violation of IDEA by failing to revise IEP during the school year due to lack of progress on short-term objectives.
  - Court held IDEA only requires annual IEP reviews.

Peanut Allergy did not Require Special Education Services

- **Barney v. Akron Board of Education, 119 LRP 5671 (6th Cir. Feb. 25, 2019).**
  - 6th Circuit held the district took appropriate precautions to protect student's reactions to peanut allergy by creating a separate "allergy action plan."
  - Student did not require special education services related to the peanut allergy thus there was no obligation to include a safety plan in his IEP.

Seizure Disorder Required Nursing Services on Bus

- **E.I.H. and R.H., v. Fair Lawn Bd. of Educ., 72 IDELR 263 (3d Cir. Sept. 5, 2018).**
  - A district denied a student with a seizure disorder FAPE by failing to provide a nurse on the school bus, essentially denying the student access to the transportation services on her IEP.
  - The district's inclusion of nursing services on the student's IHP did not protect it from liability.
  - The Court held that IDEA's procedural safeguards, such as stay-put, do not apply to IHPs.
  - Because the student needed nursing services to benefit from her education, the district was required to include such services in her IEP.

Failure to Provide Math Goals & Specialized Instruction did not Deny FAPE

- **N.S. v. Burrillville Sch. Comm. and Burrillville Sch. Dept., 73 IDELR 127 (D.R.I. Nov. 13, 2018).**
  - Because a high school student with autism and cerebral palsy was successful with accommodations in math, a district did not deny the student FAPE when it removed the student's math goals and specialized instruction.
  - The student's algebra teacher testified that the student was successful (made passing grades) as long has he had accommodations such as extended time and frequent prompting from the teacher.
  - The evaluators also opined that the student's weaknesses with math were related to processing deficits (processing speed) as opposed to a learning disability in math.

Postsecondary Transition Plan was Appropriate in Light of Student's Uncertainty

- **Rogers v. Hempfield Sch. Dist., 73 IDELR 7 (E.D. Penn. 2018).**
  - A district's postsecondary transition plan for a student contained measureable goals and provided FAPE despite the plan's focus on the student's uncertainty.
  - Because the student was unsure what he wanted to do, the IEP team provided a wide range of transition services to help the student narrow his interests.
    - For example, the student participated in a four-week program that allowed him to experience college life and multiple job shadowing opportunities.
  - Furthermore, the student successfully transitioned to college with paid employment after graduation.

Reduction of Student's IEP Minutes Denied FAPE

- **Wade v. Dist. of Columbia, 72 IDELR 247 (D.D.C. Aug. 22, 2018).**
  - When a district reduced a student's IEP minutes because the high school in which it placed the student could not implement the IEP as written, it denied the student FAPE.
  - The Judge explained that the district should have provided a private placement if the public placement could not implement the student's IEP as written.

Implementing Portions of a Prior Year IEP did not Violate IDEA

- **Oskowis v. Sedona-Oak Creek Unified School District #9, 119 LRP 6112 (D.Ariz. February 25, 2019)**
  - District did not violate IDEA when by implementing a student's 3rd grade IEP during the first few days of his 4th grade school year.
  - Parents would not agree to extend the annual review date when the IEP team was unable to finalize student's IEP by the annual review date (3 days before school started), meaning district either had to finalize the IEP without parent's input or hold another meeting after the annual review date.
  - Court noted the district's decision to delay implementation of the 4th grade IEP minimized the risk of harm to the student and gave the parent the opportunity to participate in the IEP process.

IEP Implementation for Out-of-State Transfer

- **D.S. v. Parsippany Troy Hills Bd. of Educ., 73 IDELR 143 (D.N.J. Dec. 18, 2018).**
  - A district was not required to immediately amend a transfer student's IEP upon enrollment because the district intended to temporary implement a comparable program to the prior out-of-state IEP while it evaluated the student.
  - The student transferred from Alabama to New Jersey; however, prior to enrollment in New Jersey, the student attended a private school for one month where she received services from a BCBA (but the AL IEP was not amended).
  - When the NJ district refused to implement a new IEP with the BCBA services (not in the AL IEP), the parents enrolled the child in private school and filed due process.
  - "Parents cannot, by means of a one-month private school buy-in, lock in a particular set of procedures and thereby bind the destination District."

Comparable Services for Out-of-State Transfer

- **R.S. v. Board of Directors of Woods Charter School Company, 119 LRP 7407v (M.D.N.C. March 4, 2019)**
  - Out-of-state transfer student with an IEP calling for "adaptive" PE.
  - District provided "modified" PE as comparable services for 3 months.
  - Court found that "modified" PE was not comparable.
  - In particular, the student was not provided a specialist to "come in and consult and perhaps…do lessons."
  - District required to fund private educational instruction and related services for the number of hours student should have received adapted PE services.

Least Restrictive Environment (LRE)

IEP Transitioning Student Back to Public School Offered FAPE in LRE

- **Nathan M. v. Harrison Sch. Dist., 73 IDELR 148 (D.Colo. Dec. 12, 2018).**
  - The court held that a district's IEP transitioning a student from a private program (funded for several years by the district) back to public school provided the student FAPE in his LRE
  - The court pointed out that the IEP transitioned the student incrementally (some time in both schools), provided academic focused instruction with certified teachers (as opposed to a focus on behavioral interventions), and provided the student access to non-disabled peers.
  - The judge pointed out that the law requires not just an IEP calculated to provide FAPE, but also placement in the LRE.

Progress at Private School Supports Proposed Placement in Public School

- **M.C. et. al. v. Mamaroneck Union Free Sch. Dist., 73 IDELR 48 (S.D.N.Y. Sept. 28, 2018).**
  - The progress reports from the student's private school placement supported the district's decision to offer the student an IEP placing the student in a co-teaching classroom with daily resource instruction.
  - The parents argued that the student's progress was due to the small, highly structured classes at the private school.
  - However, the Court held that due to the student's improvements, the IEP offered FAPE.

Behavior & FBAs/BIPs

District Provided FAPE Despite Lack of Formal BIP

- **S.W. v. Abington Sch. Dist., 73 IDELR 179 (E.D. Penn. Dec. 17, 2018).**
  - Because a district's IEP included behavioral interventions that reduced the student's serious disciplinary incidents, the district overcame a claim that it violated FAPE by failing to conduct an FBA and implement a formal BIP
  - The district appropriately considered the use of positive behavioral interventions by providing the student individualized behavioral management systems, daily check-in/check-outs, social skills training, and positive behavior motivators.
  - The student made significant behavioral and academic progress with such services so the student's IEP was appropriate in light of the child's circumstances.
- **See also, Cook and Jacoby, 73 IDELR 43 (E.D. Ark. Oct. 3, 2018).**

Behavior Plans Focus on Reactive Strategies Violated IDEA

- **Pottsgove Sch. Dist. v. D.H. et al., 72 IDELR 271 (E.D. Penn. 2018).**
  - The fact that a district restrained a student with autism 11 times during his 1st grade year in conjunction with the behavior plan's focus on reactive strategies instead of preventative strategies, resulted in a violation of the IDEA.

District has to Defend Claim of Exaggerated Serious Bodily Injury

- **Kim Patrick and A.G., Success Academy Charter Schs., 73 IDELR 146 (E.D.N.Y. Dec. 14, 2018).**
  - A district must defend claims that it fabricated or exaggerated claims of serious bodily injury used to unilaterally remove a student to an IAES for 45 days.
  - The parent claimed that the student did not drag the assistant principal down the hall by her hair because the student was sitting calmly on her lap when emergency personnel were called.
  - The parent further claimed that student did not stab his paraprofessional in the eye with a pencil resulting in serious bodily injury because the child's father claimed to have seen the paraprofessional uninjured in the hallway shortly after the incident.

Procedural Safeguards & Parental Participation

Scope of IEEs

- **D.S. v. Trumbull Board of Education**, **73 IDELR 228 (D.Conn. Feb. 15, 2019).**
  - After district conducted an FBA parents requested IEEs in OT, AT, and PT.
  - District rejected IEEs but agreed to conduct their own evaluations in the requested areas.
  - Under the IDEA, the right to a publicly funded IEE is only available when there is an actual disagreement with an evaluation the district has conducted.

IDEA's 2 Year Statute of Limitations

- **Ms.S. v. Regional School Unit 72, 73 IDELR 223 (1st Cir. 2019).**
  - Parent alleged the IDEA's two-year statute of limitations should be combined with the two-year statute of limitations under the state's educations code (making the statute of limitations four years).
  - Court upheld IDEA's single two-year statute of limitations.

District's IEP Thwarted Claim of Predetermination

- **L.M.P. V. Sch. Bd. of Broward Co., Fla. 118 LRP 2518 (11th Cir. 2018).**
  - Parents alleged school district refused to consider ABA therapy for their child and that the refusal constituted pre-determinism.
  - Court found the IEP team's inclusion of PECS (picture exchange communication system) in the child's IEP was related to ABA therapy and thus the district had not refused to consider ABA therapy.

Level of Parental Understanding Required

- **Colonial School District v. G.K., 73 IDELR 224 (3rd Cir. 2019).**
  - Parents alleged violation of IDEA because they failed to understand exactly how the district measured student's progress.
  - Parents cited IDEA regulation (34 CFR 300.22(e)) as requiring districts to take "whatever action is necessary" to ensure parents understand IEP team discussions.
  - Court noted the regulation specifically refers to parents who have communication difficulties or who speak a language other than English.
  - Purpose of regulation is to ensure parents understand what is happening during IEP meetings-not a substantive guarantee that parents must fully comprehend and appreciate to their satisfaction all of the purposes of the IEP.

Parental Participation Result in Educational Harm?

- **Jones v. District of Columbia, 73 IDELR 233 (D.D.C. Feb. 11, 2019).**
  - District was required by hearing officer's decision to provide a full-time special education placement.
  - Parents alleged district failed to provide a full-time special education placement and sought an award of compensatory education.
  - District followed a 32.5 hour school week but the student's IEP only included 21.5 hours per week of special education.
  - Court explained that the IEP's failure to account for every hour in special education impeded the parent's participation; however, the student did not lose any educational services as a result.
  - An award of compensatory services would have no impact on the parent's participation in the IEP process.

Limiting Parent's Email Communication did not violate IDEA

- **Bentonville Sch. Dist. v. Smith, 73 IDELR 203 (W.D.Ark. Jan. 23, 2019).**
  - Due to the excessive number of emails by a parent, the district implemented a communication protocol limiting the parent to one email per week to the student's case manager.
    - The parent violated the protocol, and the district blocked her email address for a few weeks.
  - However, because the parent continued to have the ability to fully participate in IEP meetings and spoke regularly by phone to the student's teachers, she was not denied meaningful participation.
  - The Court explained that parental participation did not mean unlimited communication with staff.

Private School/ Residential Placement

Offer of Unavailable Private Placement Denied FAPE

- **N.G. v. Placentia-Yorba Linda Unified Sch. Dist., 73 IDELR 39 (C.D.Cal. Oct. 5, 2018).**
  - A district's offer of a placement in a nonpublic school denied the student FAPE when the nonpublic school did not have room for her.
  - However, the district's offer of a new IEP 2 ½ months later in another school prevented the parent from obtaining reimbursement for a unilateral residential school beyond those 2 ½ months (or for other expenses such as transportation).
  - The Court held that the district's offer of an "illusory" program for those 2 ½ months did not offer an IEP that was reasonably calculated to confer educational benefit.

Appropriate Therapeutic Placement provided FAPE

- **A.C. and A.B.C. v. Capistrano Unified Sch. Dist., 73 IDELR 94 (C.D.Cal. Oct. 30, 2018).**
  - A district's proposed therapeutic placement offered a high school student with traumatic brain injury FAPE; thus, the parents were denied reimbursement for their unilateral private placement.
  - The Court held that the proposed therapeutic placement addressed the students needs by offering a small structured classroom environment, emotional supports, social skills training, and the support of a school psychologist and intervention specialist.
  - Testimony from director of the parent's unilateral private placement about the inappropriateness of the district's proposed placement was not heavily weighed since the director had never seen the district's therapeutic program.

Proving Private Placement is Appropriate

- **I.W. v. Lake Forest High School District No. 115 and Illinois State Board of Education, 73 IDELR 236 (N.D.Ill. February 17, 2019).**
  - Court notes that just because a student makes progress while attending a private school (i.e. passing grades) does not mean the school is an appropriate placement for reimbursement purposes.
  - The private school must also address the student's unique disability-related needs.

Private Placement Not Appropriate

- **A.S. v. Board of Education Shenendehowa Central School District**, **119 LRP 5056 (N.D.N.Y. Feb. 20, 2019).**
  - Although parents do not have to meet the same mainstreaming requirements as public school districts when choosing a unilateral private placement, the unilateral private placement should, at a minimum, address the alleged deficiencies in the child's IEP.
  - Court noted the home-based program was more restrictive than the placement the district proposed thereby removing the child even further from the general education setting.

Section 504 & ADA

Requirement to Exhaust Section 504 & ADA Claims

- **Fry v. Napoleon Community Schools, 137 S.Ct. 743 (2017).**
  - The U.S. Supreme Court held that cases in which the "gravamen" of the complaint is a denial of FAPE must be administratively exhausted.

Exhaustion Required for Claims Regarding Trained Facilitator for Communication Technique

- **K.M. v. Board of Education of Montgomery County, 73 IDELR 199 (D.Md. Jan. 25, 2019).**
  - Parents filed suit alleging violations of ADA and Section 504 due to district's failure to provide a trained facilitator to provide the student with a specific communication technique.
  - Court noted that the Fry provided that "when the gravamen of a complaint seeks redress for a school's failure to provide FAPE, even if not framed in precisely that way, then the IDEA's exhaustion requirement is triggered."
  - Court found the essence of the parent's claim was that without the requested facilitated communication technique, the student was denied an appropriate educational program and therefore parents were required to exhaust administrative remedies.

Administrative Exhaustion of 504 Claims

- **E.D. v. Palmyra R-I Sch. Dist., 73 IDELR 137 (8th Cir. Jan. 3, 2019).**
  - Under the Supreme Court's *Fry v. Napoleon Comm. Schs. (2017),* the parents of a child with Down Syndrome had to exhaust their administrative remedies prior to filing a civil action under Section 504
  - The parents requested a Section 504 plan; however, the district found the child to be eligible under IDEA and offered an IEP including special education services.
  - The parent's rejected special education services, insisting instead on the Section 504 plan accommodations.
  - Because the relief sought related to the child's educational accommodations, they had to exhaust administrative remedies.

Parents Failed to Prove Deliberate Indifference for 504 FAPE Claim

- **Garedakis v. Brentwood Union Sch. Dist., 73 IDELR 35 (9th Cir. Oct. 5, 2018).**
  - The parents of 6 children claimed that a district violated FAPE under Section 504 by allowing a special education teacher to mistreat two other students in the classroom.
  - The 9th Circuit held that the parents must prove that the district was deliberately indifferent to their children's rights to prevail on a Section 504 FAPE claim.
  - Because the district had investigated the teacher, put her on notice of the misconduct, moved her to a different school, prohibited her from being alone with students, and regularly monitored her in the classroom, the parents could not prove the district was deliberately indifferent.
- **See also Cameron D. v. Arab City Bd. of Educ., 73 IDELR 11 (N.D. Ala. Sept. 26, 2018).**

Retaliation

Parent's Band from School Grounds was Not Retaliatory

- **H.C. et. al. v. Fleming Cnty. Kentucky Bd. of Educ., 72 IDELR 144 (6th Cir. July 11, 2018).**
  - The 6th Cir. affirmed a decision that a parent could not show that Kentucky district banned her from school property for retaliatory reasons.
  - The parent was banned from school property after she engaged in "contentious and unpleasant interactions" with school personnel.
  - The Court assumed that the parent had engaged in protected activity by filing for a Section 504 hearing and advocating for her child regarding discipline.
  - The ban occurred shortly after the parent's protected activity.
  - However, the parent could not present any evidence that the ban was for retaliatory reasons, and the district had kept a detailed record of the parent's interactions leading to the ban from school property.

Teacher's DCS Report was Not Retaliatory

- **M.L. and J.L. v. Williamson Cnty. Bd. of Educ., 72 IDELR 125 (M.D. Tenn. June 12, 2018).**
  - The Court found that a teacher's DCS report was for a valid reason.
  - The teacher made a report to DCS because she believed a 7 year od engaged in sexualized behavior.
  - The parent claimed that she had engaged in protected activity by advocating for her child at IEP meetings.
  - The DCS reports were made shortly after the protected activity.
  - The teacher's reports included unnecessary information about the mother allowing the children to sleep with her and a uncle with substance abuse problems, and the teacher didn't made her DCS report until 6 months after the first incident of concern.
  - However, the teacher had a reasonable basis for believing that the behaviors when considered together might be a result of abuse.

Thank you!

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