Mississippi Directors Conference

Mississippi Department of Education

Special Education Law Update

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IDEA Regulation Update

Maintenance of Effort (MOE)

New IDEA regulations were published on April 28, 2015 making the following amendments:
1. If a Local Education Agency (LEA) fails to meet MOE, the level of expenditures required in the subsequent fiscal year is the level of effort that would have been required in the absence of that failure and not the actual reduced level of expenditures by the LEA. (34 CFR 300.203(c))
2. In addition, if the LEA fails to maintain its level of expenditures for the education of children with disabilities and therefore does not meet the MOE requirements, the State Education Agency (SEA) is liable in a recovery action. The SEA would be liable to return to U.S. Department of Education, using nonfederal funds, either the amount by which the LEA failed to maintain its level of expenditures in that fiscal year or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower. (34 CFR 300.203(d))

Federal Policy Update

Results Driven Accountability

The United States Department of Education's Office of Special Education Programs (OSEP) has revised its accountability system in order to shift the balance from a system focused primarily on compliance to one that puts more emphasis on results.

As stated by OSEP:
OSEP'S vision for Results-Driven Accountability is that all components of accountability will be aligned in a manner that best supports states in improving results for infants,

toddlers, children and youth with disabilities, and their families. The IDEA requires that the primary focus of IDEA monitoring be on improving educational results and functional outcomes for children with disabilities, and ensuring that states meet the IDEA program requirements. The current system places heavy emphasis on procedural compliance without consideration of how the requirements impact student learning outcomes. In order to fulfill the IDEA*'s* requirements, a more balanced approach to supporting program effectiveness in special education is necessary.

The Department is now requires states to include a new qualitative indicator, the State Systemic Improvement Plan (SSIP), in the state's State Performance Plan. The SSIP must include a plan based on an analysis of relevant data to focus on improving State selected educational outcomes for students with disabilities.

The OSEP's Results Driven Accountability Home Page can be found at:
www2.ed.gov/about/offices/list/osers/osep/rda/index.html

Empowering Parents and Students Through Information Act of 2015 (S.528)

A bill has been introduced in the United States Senate. The bill would ensure that parents give fully informed consent before their children with significant cognitive disabilities are placed on alternative education tracks. Parents would need to be informed how participation in alternate assessments might affect their student's ability to earn a high school diploma.
The bill would also require that each state "develop, disseminate information about, make available and promote the use of reasonable accommodations" to increase the number of students with disabilities participating in grade level instruction and assessments aligned with grade level academic and achievement standards.
Note: A similar bill has also been introduced in the House of Representatives.

IDEA Full Funding Act (S.130, H.R. 551)

The bills would authorize federal appropriations to increase from Fiscal Year 2016 to Fiscal Year 2025 to reach the 1975 Congressional goal of providing 40% of the excess cost of special education services. Currently, the share of federal appropriations is at approximately 16 percent of the national average per pupil expenditure.

Keeping All Students Safe Act (H.R. 927)

Directs the United States Department of Education to establish minimum standards that:

- prohibit elementary and secondary school personnel from managing any student by using any mechanical or chemical restraint, physical restraint or escort that restricts breathing, or aversive behavioral intervention that compromises student health and safety;
- prohibit such personnel from using physical restraint or seclusion, unless such measures are required to eliminate an imminent danger of physical injury to the student or others and certain precautions are taken;
- require states and local educational agencies (LEAs) to ensure that a sufficient number of school personnel receive state-approved crisis intervention training and certification in first aid and certain safe and effective student management techniques;
- prohibit physical restraint or seclusion from being written into a student's education plan, individual safety plan, behavioral plan, or individual education program as a planned intervention; and
- require schools to establish procedures to notify parents in a timely manner if physical restraint or seclusion is imposed on their child.

Authorizes the Department of Education to award grants to states and, through them, competitive subgrants to LEAs to: (1) establish, implement, and enforce policies and procedures to meet such standards; (2) improve their capacity to collect and analyze data related to physical restraint and seclusion; and (3) implement school-wide positive behavior supports.

Requires LEAs to allow private school personnel to participate, on an equitable basis, in activities supported by such grants and subgrants.

Directs the Department of Education to conduct a national assessment of this Act's effectiveness.

Gives Protection and Advocacy Systems the authorities and rights provided under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 to investigate, monitor, and enforce this Act's protections for students.

Directs the Department of Health and Human Services (HHS) to establish standards for Head Start agencies that are consistent with the minimum standards for the management of elementary and secondary school students.

Authorizes the Department of Education to allocate funds to HHS to assist Head Start agencies in establishing, implementing, and enforcing policies and procedures to meet such standards.

Source: The Congressional Research Office

Case Law Update

I. Child Find/Evaluation Issues

A. A student attended her local public school from K-8. While in school the student began exhibiting signs of emotional difficulty, including frequent unscheduled visits to the school nurse and guidance counselor, self-injurious threats and behavior, declining academic performance, and numerous unexcused absences. The school never conducted a special education evaluation of the student.

The parent had taken the student to a psychologist who diagnosed the student as having depression and recommended she receive wrap around behavioral health services. The school was never given the psychologist's report.

The parents then withdrew the student and enrolled her in a cyber charter school. The cyber school initiated a special education evaluation which found that the student was eligible for special education as a student with an emotional disturbance. An IEP was developed.

The parent then filed a due process hearing against the former public school alleging a violation of child find obligations. The Court, in affirming the hearing officer, held that a child find violation occurred. The Court found no merit to the school's argument that it should not be held accountable for failing to identify the student as a student in need of an IDEA evaluation because her father neither provided the school with her psychological evaluations nor requested that the school evaluate her for special education services. The Court concluded that "While no piece of evidence alone conclusively demonstrated her need for an evaluation, the mosaic of evidence in this case clearly portrays a student who was in need of a special education evaluation." As a result the student was denied a FAPE which entitled her to compensatory education. Jana K. v. Annville Cleona School District 63 IDELR 278 (United States District Court, Middle District, Pennsylvania (2014)).

B. A student who was a sophomore in high school was diagnosed as having multiple sclerosis. She was a very strong academic student who had plans to pursue her studies at the University level.

After the diagnosis, the school in collaboration with the parent developed a Sec. 504 Plan with accommodations to address fatigue, pain and decreased strength. Even with these accommodations, the student's return to school for the last month of the school year was difficult. She struggled to catch-up with assignments and tests she had missed. She felt fatigued, had trouble walking, and found that it took three times longer to complete assignments.

Her parents enrolled her in another public high school the following year. They met with the principal and counselor to review her Sec. 504 plan from the previous high school and discuss potential eligibility for IEP

services. The counselor stated that the student would not be IEP eligible but that the Sec. 504 accommodations would be provided.
The parents filed for a due process hearing alleging that both high schools violated their child find responsibilities in not finding the student eligible for special education as a student with another health impairment.
The Court affirmed the hearing officer in finding that the first high school did not violate its child find obligations since there was such a short period of time between the diagnosis of MS and the end of the school year. However, the Court found that the second high school should have evaluated the student for IEP services. The evidence showed that the student continued to have needs associated with her MS that, despite 504 accommodations, adversely impacted her academic performance. Her MS caused her to miss school repeatedly which caused her to fall so far behind that even some of her teachers said she would never be able to catch up. She suffered from depression, experienced panic attacks, and was under incredible stress because of her academic difficulties. She could not attend school in the mornings, when her symptoms were most severe, so she would take online courses, with a remedial curriculum, because she had no other alternative. The lack of a special education evaluation denied her a FAPE. Simmons v. Pittsburgh Unified School District 63 IDELR 158 (United States District Court, Northern District, California (2014)).

C. The Court held that the school district did not violate the IDEA when a functional behavioral assessment (FBA) was conducted without parent consent since it was not considered an evaluation under the IDEA. The school psychologist merely reviewed existing data to determine if additional assessments were necessary.
FBAs which are administered for the limited purpose of adapting teaching strategies to a child's behavior, as opposed to determining eligibility or changes in placement, fall outside of the evaluation requirements of the IDEA.
The targeted purpose of the FBA was not to influence the student's placement, but to guide interactions between instructors and the student in the course of teaching the curriculum. Therefore, in this case, the FBA was akin to a "screening . . . to determine appropriate instruction strategies for curriculum implementation," which is not the same as an evaluation. West-Linn Wilsonville School District v. Student 63 IDELR 251 United States District Court, Oregon (2014))

D. The parents of a student who was being home schooled and also enrolled in the school district's H.O.M.E. to supplement the home schooling challenged the Team's determination that their student was not eligible for special education. The parent requested an independent educational evaluation (IEE). The Director of Special Education promptly granted the request and included resources for obtaining an IEE and the district criteria.

The parent wanted a particular clinical psychologist to conduct the IEE. The IEE was conducted over 20 months later. The IEE report was given to the school two years after the initial request for an IEE was granted. The school district then met with the parents and indicated that it would be treating the IEE as a new referral for special education. The parents refused to consent to any new evaluation. The parent then requested a due process hearing seeking a private school placement including services recommended by the IEE.

The Court of Appeals, in affirming the District Court's Summary Judgment order for the school district, held that the school district complied with the IDEA regarding the IEE. There was no evidence that the school district bears any responsibility for the long delay in conducting the IEE. The parents never responded to the emails sent by the Director inquiring who the parents selected as the IEE. Most importantly, the Court observed that the IDEA prohibits the school district from requiring the parents to conduct the IEE promptly or interfering with their choice. The Court stated that nothing in the IDEA prohibited the school district from treating the IEE submitted over two years after the student had been deemed ineligible as a new referral for special education. Magnum v. Renton School District 63 IDELR 277 (United States Court of Appeals, 9th Circuit (2014)) Note: This is an unpublished decision.

E. The parent of a student with a disability obtained an independent educational evaluation (IEE) and asked the school district to pay for it. The school district contended that the request for the IEE was not proper since the parent failed to identify any specific disagreement with the school's evaluation.

The parent then requested a due process hearing challenging the appropriateness of the IEP. The Court held that the parent was entitled to be reimbursed for the IEE since the school district never requested a due process hearing to defend the appropriateness of its evaluation or to challenge the IEE. The IDEA gives the parent the right to obtain an IEE at public expense if he/she disagrees with the school's evaluation unless the school district files a due process hearing. Here, the school never requested a due process hearing. In addition, the IDEA prohibits a school from requiring the parent to provide an explanation of the basis of their disagreement with the school's evaluation as a condition of obtaining an IEE at public expense. Jefferson County Board of Education v. Lolita S. 64 IDELR 34 (United States Court of Appeals, 11th Circuit (2014)) Note: This is an unpublished decision.

F. The parents of a student with autism emailed the school district to request an IEE at public expense. The school district granted the request. In its response, the school district stated that the assessment must follow the requirements outlined in state policy and provided a link to an online version of the state policy document. In addition, the school imposed a

financial cap on the IEE with the provision that the parents may submit additional information as to why the limit should be exceeded.
The IEE conducted did not follow the state policy requirements and therefore the school district refused to reimburse the parents. When the school district notified the parents that the IEE was not compliant with state policy, it invited the independent evaluator to contact the school district regarding the areas of non-compliance. There was no evidence that such contact was made.
The Court upheld the school district's denial of reimbursement of the IEE. First, the Court upheld the method the school district used to inform the parent of the district's criteria in conducting an IEE. The parents cited no legal authority suggesting that the IDEA requires public agencies to provide parents with any additional or different form of notice, such as a checklist. Therefore, the Court concluded that school district's actions complied with the IDEA. Second, the Court noted that the IDEA requires that "the criteria under which the evaluation is obtained ...must be the same as the criteria that the public agency uses when it initiates an evaluation ..." A public agency is not obligated to reimburse parents of the cost of a privately-obtained IEE unless the evaluation satisfies this requirement.
Lastly, the Court rejected the parents' contention that by failing to request a due process hearing following their request for an IEE at public expense, the school district waived its right to object to reimbursing the parents for the cost of the IEE. The Court restated that the school district was not obligated to reimburse parents for the cost of a privately-obtained IEE unless the evaluation satisfies certain requirements, including compliance with agency criteria. Accordingly, the Court found the argument that the school district has somehow waived its right to object to reimbursing the parents lacked merit. B. v. Orleans Parish School District 64 IDELR 301United States District Court, Eastern District, Louisiana (2015)). On Appeal.

II. Eligibility Issues

A. A student with autism was found ineligible for special education based on the Team's conclusion that there was no adverse affect on the student's educational performance. The Team based its decision on the school's evaluation and two independent educational evaluations.
The Court affirmed the Team's decision that the student was ineligible since there was no adverse affect on educational performance putting the student in need of special education. The 268 page eligibility report, based on numerous assessments and observations, considered both the academic and non-academic aspects of the student's education. The Court found that the Team properly considered the student's overall academic success in high school and the fact that none of the school's assessments found that the student's behaviors impeded his participation in the general

curriculum. D.A. v. Meridian Joint School District No.2 62 IDELR 205 (United States District Court, Idaho (2014)).

B. A high school student began experiencing intense depression, was diagnosed with anorexia and attempted to commit suicide. The school provided the student with home education since she had difficulty going to school due to her depression, anxiety and fear. The student did well academically and received good grades both before and during the course of home instruction.

Her parents then enrolled her in a private boarding school in another state for teenage girls with histories of eating disorders, substance abuse or behavioral issues. She maintained good grades and her emotional problems improved.

The parents then asked the public school district of residence to identify their student eligible for special education. The Team determined the student was not eligible for special education since she performed well academically and her emotional problems were not impacting her education. The parents challenged the eligibility decision by requesting a due process hearing.

The Court, in reversing the state review officer (SRO), concluded that the student was eligible for special education. The Court stated that the SRO's decision amounted to a finding that a student with good grades cannot be found IEP eligible which is not supported by the law. In this case, the student's educational performance was impacted by her emotional/psychiatric problems based on her inability to attend school. The Court ultimately ordered reimbursement for her private placement. The student was denied a FAPE since the school never found her eligible or developed an IEP for her. In addition, the private school was appropriate since the student's educational needs were met. M.M. v. New York City Department of Education 63 IDELR 156 (United States District Court, Southern District, New York (2014)).

C. A student was found ineligible for special education as a student with a specific learning disability. The school district adopted a severe discrepancy criteria for SLD which required a showing of a minimum of a 1.5 standard deviation score between the student's ability and achievement. The assessment data considered by the eligibility team did not show a 1.5 standard deviation and therefore the student was deemed ineligible.

The Court overturned the team's decision concluding it was an error for the team to base an eligibility determination solely on the statistical discrepancy test as mandated by the school district's policy. The IDEA regulations state that a district may "not use any single measure or assessment," or "single procedure," "as the sole criterion for determining whether a child is a child with a disability." Therefore, SLD determinations must be based on a wide range of data -- and not on any

single measure. The Court stated that "although a school district may lawfully utilize a severe discrepancy approach to determine whether a child has an SLD, and employ a statistically sound formula to measure whether a child has a severe discrepancy between aptitude and actual achievement, that formula may not be the sole determinant of whether a child has a SLD". V.M. v. Sparta Township Board of Education 63 IDELR 184 (United States District Court, New Jersey (2014)).

D. The U.S. Office of Special Education (OSEP) issued a Memo to State Directors reminding them that although the IDEA does not specifically address "twice exceptional" students (students with disabilities who have high cognition) " It remains the Department's position that students who have high cognition, have disabilities and require special education and related services are protected under the IDEA and its implementing regulations."

OSEP asked the State Directors to "widely distribute" a previous OSEP guidance letter, Letter to Delisle (62 IDELR 240), to the LEAs in the state and remind each LEA of its obligation to evaluate all children, regardless of cognitive skills, suspected of having one of the 13 disabilities outlined in 34 CFR Section 300.8.

OSEP further clarified that it would be inconsistent with the IDEA for a child, regardless of whether the child is gifted, to be found ineligible for special education and related services under the SLD category solely because the child scored above a particular cut score when determining if there is a severe discrepancy between intellectual ability and achievement. Memorandum to State Directors of Special Education,15-08 115 LRP 18455 (United States Department of Education, Office of Special Education Programs (2015)).

E. A student who was experiencing reading difficulties received additional reading instruction under the school's response to intervention (RTI) system of general education supports. The RTI system was available to all students who were experiencing educational difficulties. The parent subsequently made a referral for a special education evaluation to determine whether their student had a specific learning disability.

The school conducted the evaluation and convened an eligibility team meeting. The team applied the severe discrepancy criteria which the school district adopted (as opposed to the RTI process) for determining whether the student was eligible for special education as having a learning disability. The student was eventually found eligible under the category specific learning disability. The parent never received the RTI data collected for the student nor was it discussed at the IEP Team meeting. The parent initiated a due process hearing challenging the evaluation process and the appropriateness of the IEPs in light of independent educational evaluations they obtained. They sought reimbursement for the IEEs and the private reading program they paid for.

The Court of Appeals (in a 2-1 decision), in reversing the District Court, held that the school district violated the IDEA by failing to insure that the "complete" RTI data was documented and carefully considered by the entire IEP team and failing to furnish the parents with the data. As a result the Court concluded that the parent's right to be meaningful participants in the decision making process was significantly impacted and rendered them unable to give informed consent for both the initial evaluation and the special education services. Therefore, FAPE was denied.

The Court rejected the school's argument that the IDEA's RTI regulations were not applicable since the school had adopted a severe discrepancy criteria for determining eligibility. There is no authority to support the contention that the IDEA's RTI requirements are limited only when RTI criteria is used to determine eligibility.

The Court noted that the IDEA requires that in determining eligibility and the educational needs of the student the team must draw upon information from a variety of sources. The school district must "ensure that the information obtained from all of these sources is documented and carefully considered". (34 CFR 300.306(c)(1)) In addition, the IDEA regulations applicable to students suspected of having a specific learning disability require that the team ensure the underachievement is not due to a lack of appropriate instruction. Specifically, the team must consider:

> 1. Data that demonstrates that prior to, or as part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
>
> 2. Data based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessments of student progress during instruction, which was provided to the child's parents.

(See 34 CFR 300.309(b)(1) and (2))

The Court remanded the case to the District Court to determine the relief to be granted for the denial of FAPE. M.M. v. Lafayette Board of Education 64 IDELR 31, 767 F.3d 842 (United States Court of Appeals, 9th Circuit (2014)). (Amended Opinion)

F. A student with multiple diagnoses over the years (Post Traumatic Stress Disorder, severe depression, anxiety), who abused alcohol and was a victim of sexual abuse was placed in an out of state treatment facility by her parents. The facility certified the student as being emotionally disturbed. However, the resident school district found that the student was not eligible for special education since she was deemed socially maladjusted.

Her parents sought reimbursement for the costs of the residential treatment

center. The hearing officer ordered reimbursement based on a number of procedural errors under the IDEA. On appeal, the Court remanded the case back to a different hearing officer to determine whether the student was eligible for special education under the category of emotional disturbance. The hearing officer concluded that the student was socially maladjusted, not emotionally disturbed, and therefore was not eligible for special education.

On appeal of the eligibility determination, the Court reversed. While the Court agreed that the evidence indicated that the student was socially maladjusted, there was also substantial evidence to support the conclusion that she was emotionally disturbed in at least one category -- a general pervasive mood of unhappiness or depression. The Court concluded that " it is more likely than not that her major depression, not just her misconduct and manipulation, underlay her difficulties at school. The evidence also reflects that her depression had lasted for a long time, was marked and affected her performance at school." H.M. v. Weakley County Board of Education 65 IDELR 68 (United States District Court, Western District, Tennessee (2015))

III. IEP/FAPE

A. The U.S. Supreme Court in Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al. (102 S. Ct. 3034, IDELR 553:656 (1982)) held that an inquiry in determining whether a FAPE is provided is twofold:

1. Have the procedures set forth in the IDEA been adequately complied with?

2. Is the IEP reasonably calculated to enable the child to receive educational benefits?

B. Procedural Issues

1. The parents of a student with autism challenged two IEPs for their student. The Court of Appeals affirmed the hearing officer's decision that both IEPs provided the student a FAPE.

The parents challenged the first IEP on procedural grounds alleging that neither the IEP nor the prior written notice (PWN) were sufficiently specific impacting the parent's ability to meaningfully participate. The PWN stated that the student would be placed in the "public high school in his community school". The Court affirmed the lower court's conclusion that the hearing officer properly found that the prior written notice provided to the parent was sufficient to put the parent on notice of which school

was being proposed. The Court stated even if the notice did not make a sufficiently specific formal placement offer, it did not significantly restrict the parent's ability to participate in the development of the IEP.
The parents challenged the second IEP alleging that the IEP developed placing the student in a public high school program could not be implemented due to staffing shortages. The Court concluded the evidence supported the hearing officer's conclusion that the IEP could be implemented as written. The testimony included the fact that there was a contract for private service providers to be backup service providers in the event of a shortage of public school staff. Therefore, the IEP offered the student a FAPE. Marcus I. v. Hawaii Department of Education 63 IDELR 245 (United States Court of Appeals, 9th Circuit (2014)). Note: This is an unpublished decision.

2. A student who was parentally placed in a private school by his parents was found eligible for special education by the school district. The Court held that the school violated the IDEA by not offering the student a FAPE through the development of an IEP. It rejected the school's argument that an IEP need not be developed until the student enrolls in the public school. The Court stated that under the IDEA a school has a continuing responsibility to offer a FAPE to a student with disabilities who resides within the school district regardless of whether the student is currently enrolled in a private school.
The parents then can either accept the offer of FAPE in the IEP by enrolling their student in the resident school or refuse the FAPE offer by keeping their student in the private school. (Note: If the student remains in the parentally placed private school, the student would be considered for a service plan under the IDEA.) District of Columbia v. Wolfire 62 IDELR 198 (United States District Court, District of Columbia (2014)).

3. The parent of a student with autism, sensory integration dysfunction, an intellectual disability and ADHD challenged the appropriateness of their student's IEP. The proposed IEP called for transitioning the student from a private special education school to a public classroom (6 students, 1 special education teacher, and 1 classroom paraprofessional) along with an individual 1:1 paraprofessional for three months to ease the transition. The parent kept their student at the private school and requested a due process hearing.
The parent felt the IEP was inappropriate to meet the student's academic and behavioral needs. The Court agreed and determined that FAPE required a 1:1 paraprofessional for more than three

months. At the hearing, the school district psychologist testified that the 1:1 paraprofessional could have been continued beyond three months if warranted. The Court held that reliance on such testimony was improper. At the time when the parent had to decide where to place her student, the parent could not know whether the school would offer the services of a paraprofessional for more than the three months as specified in the IEP. The Court stated that it was "inappropriate to take into account the possibility of mid-year amendments in determining whether an IEP as originally formulated was substantively adequate….We therefore think it contrary to the logic of [case law], and of the IDEA itself, to penalize her for relying upon the IEP's description of services in making the placement decision." Reyes v. New York City 63 IDELR 244 (United States Court of Appeals, 2nd Circuit (2014))

4. The student has dystonia, a progressive neuromuscular disease that makes his muscles spasm painfully. After returning from medical treatment out of state, the student's IEP was amended to provide services in the student's home due to the student's medical condition.

   The school district initiated a due process complaint alleging that the parents "effectively revoked their consent" for the services provided to their student by "exhibit[ing] conduct threatening and inhibiting providers from working with the student within the home," among other things. The parents subsequently filed three separate due process hearing requests.

   The Court agreed with the hearing officer that the parents did not formally revoke consent and therefore, the school district was required to continue to provide a FAPE. However, the Court affirmed the hearing officer's conclusion that the overwhelming evidence showed that the parents' conduct prevented the school district from providing services to the student and amounted to an effective revocation of services.

   The hearing officer ordered the school district to solicit the student's doctor's opinion as to the barriers that the student would face in receiving services outside the home and whether or not those barriers could be "overcome with appropriate safeguards". If the doctor approved of services in an alternative location, one or both parents may, but would not be required to be present in the facility. The Court rejected the parents allegation that this decision could only be made by the IEP Team since the IDEA does not require an IEP meeting to determine the location of services. Location of services and placement are not synonymous under the IDEA. Grasmick v. Matanuska Susitna Borough School District 64 IDELR 68 (United States District Court, Alaska (2014)).

5. The parents of a student with a disability had ongoing concerns regarding their son. The school district thought that the student's mother was making too many demands on district staff and wanted to have one point of contact so that all information shared would be the same. The school district did not attempt to meet with her to attempt to resolve the issue or limit the number of communications before announcing at an IEP team meeting near the end of the school year that the School District's Director of Special Education would be the sole point of contact for IEP purposes.
The parents initiated a due process hearing alleging that FAPE was denied and requested 900 hours of compensatory education. The hearing officer determined that, before the School District limited the parent's communications with IEP team members, it should have told her that there was a problem and requested that she reasonably limit her communications or, at least, it should have warned her before imposing a limitation. Because it did not do so, the hearing officer concluded that near the end of the school year, the limitation on communications with the IEP team, coupled with some ridiculing emails, resulted in a denial of a FAPE. Four hours of compensatory education was awarded.
On appeal, the Court stated that any denial of a FAPE was limited to near the end of the school year and resulted from the limitation on the parent's communications with the IEP team. The Court held that the student was not entitled to any additional compensatory education. Stepp v. Midd-West School District 115 LRP 7892 (United States District Court, Middle District, Pennsylvania (2015)).

6. OSEP has issued a policy interpretation that a state may permit the use of email to distribute IEPs and related documents, such as progress reports, to parents, provided that the parents and the school district agree to use the electronic mail option, and the States take the necessary steps to ensure that there are appropriate safeguards to protect the integrity of the process.
In addition, states may use electronic or digital signatures for consent, provided they take the necessary steps to ensure that there are appropriate safeguards to protect the integrity of the process. That is, a parent must understand and agree to the carrying out of the activity for which the parent's consent is sought. Letter to Breton 114 LRP 14938 (United States Department of Education, Office of Special Education Programs (2014))

C. Substantive Issues

1. The parents of a 17 year old student with a specific learning disability challenged his IEPs which they alleged were not based

on his individual needs. The Court concluded that the IEPs' reading goals were inappropriate given the student's assessment data.

The IDEA requires IEPs that include a reasonably accurate assessment of students and meaningful goals based on the student's individual needs. The evidence here indicated that the IEP goal for reading was not designed for this student but was the "state standard for ninth grade students" regardless of whether it fit his particular needs. The teachers testified that "they just inserted the standard 9th grade goal" even though his reading skills were assessed to be on a first grade level. The Court noted the school's apparent use of boilerplate IEPs, with goals far above the student's reading level, indicated that the reading goals of the student's IEPs did not provide him with any educational benefits beyond those he would have received if he never had the IEPs. It appeared the student was treated as any other disabled student during the creation of his IEPs, and was held to the same standards that any student, with or without a disability, would have been.

The Court found that such a practice flies in the face of the purpose and goals of the IDEA, which require the district to develop an individualized program with measurable goals. The point of requiring an IEP is to have the program meet the child's unique needs, not to assume that all children in special education are capable of meeting state goals for that grade level.

In addition, the Court found that the transition services were inappropriate. The IDEA requires IEPs to include "appropriate measurable post-secondary goals based on an age appropriate transition assessment" and to describe the transition services to be provided. In this case, the vague language used to describe the student's postsecondary goal -- "student will be prepared to participate in post-secondary education" -- did not match his diploma track. The student was placed on an alternate diploma track which is designed to prepare students with disabilities for employment upon exiting high school. The Court stated that this was another illustration of the school's use of stock language in the planning and implementation of this student's IEP. As a result, FAPE was denied. Jefferson County Board of Education v. Lolita S. 64 IDELR 34 (United States Court of Appeals, 11th Circuit (2014)). Note: This is an unpublished decision.

2. The Court held that the student's IEP did not provide the student with a FAPE since it did not properly address the student's visual impairment. Although the school had a report that the student was visually impaired, the report was "buried in some files" and not used in preparing the student's IEP. The evidence showed that the student's classroom teachers were oblivious to the nature of his

visual impairment.
The evaluation conducted by the vision teacher focused primarily on evaluating the impact of the student's impairment on his mobility and did not address the impact on his learning. The fact that the student's teachers exhibited no understanding of the impact of the student's disability is a "damning failure" on the part of the school district leading to an inappropriate IEP. Caldwell Independent School District v. Joe P. 62 IDELR 192 (United States Court of Appeals, 5th Circuit (2014). Note: This is an unpublished decision.

3. The IEP for a student with autism called for the student to be placed in a 6:1:1 (6 students, one teacher, one aide) classroom that included occupational, speech, and language therapy, as well as a behavioral management paraprofessional and supports. The proposed classroom used the TEACCH methodology. The parents wanted their student in a placement that utilized the Applied Behavior Analysis (ABA) method for teaching students with autism. A due process hearing was initiated.
The Court upheld the IEP as providing FAPE noting that the school district's witness testified that TEACCH was an appropriate instructional method for the student. Specifically, the Court stated, "We are required to give particular deference to state educational authorities on the issue of educational methodology, see Board of Education v. Rowley, (1982), and on this record it cannot be said that [the student] could only progress in an ABA program." A.S. v. New York City 63 IDELR 246 (United States Court of Appeals, 2nd Circuit (2014)). Note: This is an unpublished decision. See also R.B. v. New York City 64 IDELR 126 (United States Court of Appeals, 2nd Circuit (2014). Note" This an unpublished decision.

IV. Related Services/Assistive Technology

A. The United States Supreme Court Decision – Irving Independent School District v. Tatro, 104 S. Ct. 3371, IDELR 555:511 (1984).

1. The United States Supreme Court established a three-prong test for determining whether a particular service is considered a related service under the IDEA. To be entitled to a related service:

a) A child must have a disability so as to require special education under the IDEA;

b) The service must be necessary to aid a child with a disability to benefit from special education; and

c) The service must be able to be performed by a non-physician.

B. The parents of an 8 year old student with autism rejected the IEP developed for their student which called for services to be provided in the "total school environment" and made a unilateral placement at a private special education school. They sought reimbursement by requesting a due process hearing.
The Court held that the provision of speech services through an "embedded model" (direct speech therapy provided in the classroom with peers present) as opposed to a "pull out" model was appropriate. In addition, although a graduate clinician provided some of the services and authored the progress notes, the clinician was being supervised by a speech language pathologist and therefore her role of clinician did not impact the appropriateness of the services. Although the student may have made more progress through one-on-one therapy, the evidence supported the conclusion that the student made significant progress through the embedded model of services. E.L. v. Chapel Hill-Carrboro Board of Education 773 F.3d 509, 64 IDELR 192 (United States Court of Appeals, 4th Circuit (2014)).

C. The parents of an 8 year old student with autism initiated a due process hearing alleging that FAPE was denied in particular regarding the students communication needs. The hearing officer agreed and ordered compensatory education.
The parents provided testimony that they used an iPad (with the Proloquo2Go application) to communicate with the student successfully at home which reduced her problematic behaviors. The school testified that they did not find that to be the case in school and felt that when she used the iPad it did not improve her communication skills. The school stopped using the iPad application and started using the Picture Exchange Communication System (PECS). The evidence showed that there had been 'inconsistent and limited progress" under the student's IEP communication goals.
The Court held that the student was denied a FAPE. The Court stated "Despite widespread agreement that [the student] used behaviors to communicate when other avenues are unavailable, and that [the student] had more success with assistive technology outside of school, the District failed to take affirmative measures to determine why [the student] did not exhibit those successes at school. '[I]t is the responsibility of the child's teachers, therapists, and administrators -- and of the multi-disciplinary team that annually evaluates the student's progress -- to ascertain the child's educational needs, respond to deficiencies, and place him or her accordingly.'" North Hills School District v. M.B. 115 LRP 15024, 684 C.D. 2014 (Pennsylvania Commonwealth Court (2015)).

V. Placement/Least Restrictive Environment

A. The Court concluded that the IEP for a 12 year old student with specific learning disabilities failed to provide the student a FAPE in the least restrictive environment. The IEP called for the student to spend five out of six and half hours each day in the regular classroom.
The IDEA requires the IEP to explain the extent, if any, that the student will not be educated in an environment with peers who are non-disabled after the team has considered the student's needs and the provision of supplementary aids and services. This student's IEP stated that a "regular classroom environment with supplementary aids and services….would not meet [the student's] need for specially designed instruction at this time". The Court affirmed the hearing officer's finding that this vague statement regarding placement did not include the reasons for the student's exclusion from the regular education classroom. Since the Court found the school failed to meet the IDEA standard to identify reasons why the student would be excluded part-time from the regular classroom environment, FAPE was denied. Hannah L. v. Downington Area School District 63 IDELR 254 (United States District Court, Eastern District, Pennsylvania (2014))

B. The IEP placement for a student with autism was changed from a general education class on a shortened schedule to a special education class with some opportunity to interact with peers who are non-disabled during the non-academic portion of the day.

The Court, in affirming the Administrative Law Judge, held that the IEP was inappropriate both procedurally and substantively. The Court held that the broad offer of a special education class without including the specific classroom location violated both the IDEA and state law "as a matter of law". The failure to include a specific class placement "significantly restricted" the parents participation in the IEP process since it did not provide them with sufficient information to determine whether the IEP was appropriate.
In addition, the Court in applying the standards established by the Holland case (the educational benefits from inclusion in a general education class, the non-academic benefits and student's effect on the general education classroom), concluded that the least restrictive environment for the student was placement in a general education class in the student's home school. Bookout v. Bellflower Unified School District 63 IDELR 4 (United States District Court, Central District, California (2014)).

C. The parents alleged that the school district denied their student a FAPE by failing to specify which classroom would provide the special education services proposed. The Court, in adopting the Magistrate's findings, held that the failure to identify a specific special education classroom in the IEP

did not deny the student a FAPE.
Here, the parents knew months before the IEP was issued the exact services to be provided, the quality of the staff who would be providing them, the educational model used to deliver these services, and the availability of a regionally accessible classroom where they would be provided. The only information that was not available to the parents during the IEP process was the exact location where these services would be delivered. While this is an important factor in evaluating whether the IEP delivered a FAPE, it is not dispositive. The Court stated that, moreover, the only reason that the classroom was unspecified, was the parents' adamant and continuing refusal to cooperate with the final step necessary for a classroom-specific placement. Bobby v. School Board of the City of Norfolk 63 IDELR 225 (United States District Court, Eastern District, Virginia (2014)).

D. The parents of an 11 year old student with autism received the student's IEP and the prior written notice form specifying a particular school as his placement for the upcoming school year. The parent visited the school and informed the school district she was rejecting the specific school since the students there were in a much older age group. The parent received no response from the school district and due process was initiated.
At the due process hearing, the school district presented evidence that the student would actually have been placed in another school within the district. The Court, in reversing the hearing officer and state review officer, held that the student was denied a FAPE. Depending on the needs of the student, the characteristics of the specific school site could be an important factor in assessing the appropriateness of the IEP. Here, the parent was informed for the first time at the due process hearing (six months after the school year started) that her student would have actually attended a different school than the one in the notice. The Court concluded that the parent was denied her right to meaningfully participate in the school selection process noting that it was distinct from the parent's right to determine the actual school selection. V.S. v. New York City 63 IDELR 162 (United States District Court, Eastern District, New York (2014))

E. The Court held that the IEP developed for a student with autism was both procedurally and substantively appropriate. The parents alleged that they were denied meaningful opportunity to participate in the selection of the school their son would attend. Although the Court noted that this issue was waived since it was not included in their due process hearing complaint, even if it had been included it lacked merit. Parents are "guaranteed only the opportunity to participate in the decision about a child's 'educational placement,' … which 'refers to the general educational program -- such as the classes, individualized attention and additional services a child will receive -- rather than the 'bricks and mortar' of the specific school' " citing the T.Y. v. New York City (2009).

In addition, the Court upheld a change in placement to a classroom with six students, one teacher, one classroom paraprofessional and a full time "transitional paraprofessional" to support the student's move from a private to a public school. The parents contended that this program was too supportive since it would be a "crutch that vitiates their son's right to be educated in the least restrictive environment". The Court observed that "the least restrictive environment applies to the type of classroom setting, not the level of additional support a student receives within a placement". R. B. v. New York City Department of Education 65 IDELR 62 (United States Court of Appeals, 2nd Circuit (2015). Note: This is an unpublished decision.

F. The parents of a student with autism, an intellectual disability, ADHD and a seizure disorder rejected the IEP developed for their student which would change the placement from full time in home services to a modified plan of in school services in a self-contained class for two hours per day and in home services for three hours per day. The parents felt that in home instruction was necessary to prevent the student from becoming ill or developing stress and would also afford them the opportunity to non-prescription nutritional supplements every 45 minutes.
The Court upheld the IEP stating that the LRE provisions of the IDEA favors reintegrating students into the school setting where they can socially interact with other students. The evidence showed that the strict diet and nutritional supplements were not prescribed by a physician and that the student did not have a life threatening condition justifying home instruction. A.K. v. Gwinnett County School District 62 IDELR 253 (United States Court of Appeals, 11th Circuit (2014)). Note: This is an unpublished decision. Petition for appeal to the United States Supreme Court denied.

VI. Unilateral Placements

A. The United States Supreme Court in Burlington, MA v. Department of Education et al., 105 S. Ct. 1996, IDELR 556:389 (United States Supreme Court (1985), held that parents may be awarded reimbursement of costs associated with a unilateral placement if it is found that:

1. The school district's IEP is not appropriate;

2. The parent's placement is appropriate; and

3. Equitable factors may be taken into consideration

B. Parental placement at a school which is not state approved or does not meet the standards of the state does not itself bar public reimbursement

under the Burlington standard if the placement is "proper". Florence County School District Four et al. v. Carter, 114 S. Ct. 361, 20 IDELR 532 (United States Supreme Court (1993)).

C. A student with autism, ADHD and digestive disorders had serious trouble with anxiety, obsessive compulsive behavior and sensory processing. His parents asked the school district to place the student in a smaller high school in the district. When the IEP Team refused, the parents withdrew him from school and arranged for him to receive one on one instruction and speech and occupational therapy at home. The therapies were partially paid for by Medicaid.

The school district initiated a due process hearing seeking a determination that the IEP afforded the student a FAPE. The Court found that the IEP was both procedurally and substantively inappropriate. The IEP failed to address the student's needs for stress management and reading comprehension. Also, the school predetermined the placement before the IEP Team meeting which did not afford the parents with a meaningful opportunity to participate in the placement decision.

The school district argued that the lower court erred when it ordered reimbursement for the therapies paid for by Medicaid and for ordering reimbursement for the home based instructional program. The school district argued that a reimbursement claim is only viable if the parents have placed their student unilaterally in a private school.

The Court of Appeals affirmed the reimbursement order. Although the therapies were listed as medical services on a Medicaid form, the Court found that the actual purpose of the services provided were to meet the student's educational needs.

In addition, the Court rejected the school's argument that reimbursement is limited to a private school placement when it held that the IDEA allows a Court under its remedial authority to order reimbursement for instructional services provided in the home. R.L. v. Miami Dade County School Board 63 IDELR 182 (United States Court of Appeals, 11th Circuit (2014)).

D. The parents of a high school student with emotional and social disabilities unilaterally withdrew him from public school without advance notice to the school district. The student was placed in an out of state wilderness camp. The student's psychologist recommended the placement change to improve the student's mental-health and substance-abuse issues. The student was released from the wilderness camp and placed in a mental health facility where he was diagnosed as having a reactive attachment disorder (RAD).

The IEP Team denied the parents' request to reimburse them for the costs associated with the placement. The Court of Appeals held that the parents were not entitled to reimbursement for either private placement. The Court concluded that the parents placed the student in both private placements

for noneducational reasons.
In addition, the Court stated that in order to be appropriate for reimbursement under the IDEA the private placement must measure and judge the student's progress by educational achievement instead of disability treatment. The founder of the mental health facility testified "that the number one goal at [the mental health facility] was treating RAD". In light of the noneducational focus of the program the Court denied reimbursement under the IDEA. Fort Bend Independent School District v. Douglas A. 65 IDELR 1 (United States Court of Appeals, 5th Circuit (2015)) Note: This is an unpublished decision.

E. The parent of a student with a learning disability and ADHD made a unilateral placement of his student in a private college preparatory boarding school. The parent filed for a due process hearing seeking reimbursement for the unilateral placement from their resident school district.
The Court of Appeals upheld the dismissal of the due process hearing by the ALJ and the District Court. The Court held that the parent did not follow the notice requirements set out in the IDEA. The IDEA states that a parent must notify the school of their intent to pursue public reimbursement of a private placement either at the most recent IEP Team meeting leading up to or at least 10 business days prior to the removal of the student from the public school. The Court found that the student was "removed" from the public school when the student started orientation at the boarding school.
In addition, the Court held that the school did not violate the procedural rights under the IDEA when it refused to respond to the parent's inquiry regarding the methodology that would be used in the IEP's developmental reading program and the related teacher qualifications. Therefore, the parent was not denied a meaningful opportunity to participate in their student's IEP development. W.D. v. Watchung Hills Regional High School Board of Education 115 LRP 9847 (United States Court of Appeals, 3rd Circuit (2015)). Note: This is an unpublished decision.

F. A high school student was diagnosed by a private psychiatric nurse as having a bi-polar disorder and depression and was experiencing both academic and emotional difficulties. The school evaluated the student and did not find her eligible for special education but provided her with supports, counseling and tutoring.
The parents unilaterally placed the student in a therapeutic boarding school. They did not ask their school district for tuition reimbursement until approximately 6 months after the student had been enrolled in the therapeutic placement.
After rejecting the request for tuition reimbursement, the parents challenged the decision by requesting a due process hearing. The hearing officer ordered reimbursement which was overturned by the state review

officer. The District Court agreed with the hearing officer that reimbursement was warranted.

The Court of Appeals affirmed that the student was denied a FAPE but concluded that the therapeutic school was not appropriate. The evidence presented regarding the private school was testimony from the school's Vice President for External Relations and Admissions. Although not a certified psychologist he testified that the student was progressing well psychologically but did not know any details of her academic progress. In addition, the student's family counselor subjectively believed the student was progressing psychologically but again did not address her academic achievement. The Court concluded that the parents did not present sufficient "objective evidence" of how the private program was specially designed or the specific services provided to "channel [the student's] psychological improvement into academic improvement". Hardison v. Board of Education of the Oneonta City School District 773 F.3d 372, 64 IDELR 161 (United States Court of Appeals, 2nd Circuit (2014)).

VII. Behavior and Discipline

A. The parents of a student with autism challenged the appropriateness of their student's IEPs on several grounds. Regarding behavior, the parents alleged the IEPs were legally deficient since they failed to adequately address his behavior since the school did not conduct a functional behavioral assessment or implement a behavior intervention plan.

The Court upheld the IEPs holding that the alleged failure to conduct a functional behavioral assessment or develop a behavior intervention plan was "irrelevant" since the IDEA does not require such assessment or plan outside of certain disciplinary actions which were not present here. Although the school was having difficulty managing the student's behavior it was in the process of reassessing his behavior interventions when the student was withdrawn from school. Endrew F. v. Douglas County School District 64 IDELR 38 (United States District Court, Colorado (2014))

B. An 18 year old student with an ADHD, Impulse Control Disorder and an Adjustment Disorder was placed in a 45 day Interim Alternative Educational Setting (IAES) in the home for possession of a three inch long knife and alcohol in school. The Team determined that the student's behaviors were not a manifestation of his disability. The student was then suspended for the remainder of the school year by the Board of Education.

The parents requested an expedited due process hearing challenging the long term suspension. The Administrative Law Judge ordered that the student be allowed to return to high school. The school district appealed the decision. While the appeal was pending the school asked the Court to issue a temporary restraining order prohibiting the student from returning

to the high school.
The Court granted the school's Motion. In doing so, the Court noted that the IDEA allows a school to place a student with a disability in a 45 day IAES for weapon offenses. Therefore, the IAES was the current educational placement. Additionally, the Team found no manifestation between the behaviors and disability. The Court stated that these factors supported the conclusion that the school had a substantial likelihood of showing that the stay put provision should not allow the student back into school during the pendency of the proceedings. In addition, the school has a "legitimate interest in, and obligation to provide, safe and productive learning environments". Ocean Township Board of Education v. E.R. 63 IDELR 16 (United States District Court, New Jersey (2014)).

C. The parents of a fifth grade student who is emotionally disturbed challenged the appropriateness of her IEP which included a behavior intervention plan. The evidence showed that at the end of her fourth grade year and into her fifth grade year, she would have outbursts in the classroom that would require the teacher to redirect her, take her out of the classroom, and, if she did not de-escalate, the counselor or other staff would have to move her to a cool-down area and counsel her on coping strategies and de-escalation.
By the end of her fifth grade year, the student was self-regulating when she was shutting down and would self-remove from the classroom to the cool-down area. The number of outbursts in class decreased significantly, and she was able to come back to the classroom on her own initiative. The evidence demonstrated that the school district reviewed the BIP with the student's teachers, trained her teachers on the BIP, and implemented the BIP. The student showed progress under the BIP in that she was learning to use self-control. Therefore, the Court found that the IEP and BIP were appropriate. C.P. v. Krum Independent School District 64 IDELR 78 (United States District Court, Eastern District, Texas (2014)).

D. The Court rejected the school district's Motion for a Temporary Restraining Order which would have prohibited the student from returning to the public high school and would have changed the student's placement to an Interim Alternative Educational Setting. The school district was unable to prove that the student's return would have likely resulted in injury to himself or others. The Court's analysis was based on the lack of full implementation of the student's IEP behavioral component which called for a "safe person" to accompany the student. Troy School District v. K.M. 115 LRP 2247 (United States District Court, Eastern District, Michigan (2015)).

E. A high school student with a disability enrolled in an alternative high school program last spring. In the first month of attendance he (1) physically attacked a fellow student and several staff members, including

spitting at and kicking staff members who tried to restrain him to protect the student whom he attacked; (2) menaced two staff members with a pen, by holding it in a stabbing position and refusing to put it down when told; (3) punched a student while in a classroom, and then punched the principal of the school while leaving the room; and (4) threatened to rape a female staff member and punched another staff member in the face.

As a result of these violent incidents, his IEP Team held a meeting and decided to change his educational placement to reduce his hours of attendance to one hour per day. After the change in his attendance schedule, the student returned to school. That same day he attacked a security liaison at the school.

In the current school year, the student has (1) threatened to bring guns to school to kill staff members whom he has had incidents with in the past year; (2) made racist comments toward African-American staff members; and (3) punched a school administrator in the face. The school district asserted that it did not have the resources or facilities to properly and safely address the student's educational needs in his present educational placement.

Based on these facts which neither the parents nor the student contested, the Court found that the school district had made a sufficient showing that the student's continued attendance in his current educational placement posed an immediate threat to the safety of school staff and other students. Therefore, the Court issued an injunction barring the student from entering any premises owned by the school district or attending any school events. The Court also ordered the school district to continue the education of the student by providing him access to the school district's curriculum through the state's virtual academy online program and provide him access to designated school staff by telephone to answer any questions that he may have. This order remains in place while the school district conducts additional evaluations and holds IEP Team meetings necessary to transition the student to a more suitable educational placement. Wayne-Westland Community Schools v. V.S. 115 LRP 5164 (United States District Court, Eastern District, Michigan (2015)).

VIII. Harassment/Bullying Issues

A. The United States Department of Education's Office of Special Education and Rehabilitative Services (OSERS) issued a letter providing an overview of a school district's responsibilities under the IDEA to address bullying of students with disabilities. Although there is no federal law addressing bullying , the Department defines bullying as:

> Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time. Bullying can involve overt

> physical behavior or verbal, emotional, or social behaviors (e.g., excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (e.g , cell phones, computers, online/social media), can include offensive text messages or e-mails, rumors or embarrassing photos posted on social networking sites, or fake online profiles.

The Department emphasized that bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA whether or not the bullying is related to the student's disability. The denial of FAPE must be remedied.

The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's individual needs; and revise the IEP accordingly. The IDEA placement team (usually the same as the IEP Team) should exercise caution when considering a change in the placement or the location of services provided to the student with a disability who was the target of the bullying behavior and should keep the student in the original placement unless the student can no longer receive FAPE in the current LRE placement.

If the student who engaged in the bullying behavior is a student with a disability, the IEP Team should review the student's IEP to determine if additional supports and services are needed to address the inappropriate behavior. In addition, the IEP Team and other school personnel should consider examining the environment in which the bullying occurred to determine if changes to the environment are warranted. Dear Colleague Letter 61 IDELR 263 (United States Department of Education, Offices of Special Education and Rehabilitative Services Office of Special Education Programs (2013)).

B. The Office for Civil Rights (OCR) issued a guidance document regarding a school district's responsibility to address the bullying of a student who is deemed disabled under Section 504.

The bullying of a student on any basis (whether disability related or not) who is receiving services and/or accommodations under a 504 plan may result in a denial of FAPE that must be remedied. A school's compliance with state law and/or local school policy is not sufficient to meet the

school's responsibility under Section 504.

Under Section 504, as part of the school's response to bullying, the school should convene the Section 504 Team to determine whether, as a result of the effects of bullying, the student's needs have changed such that the student is no longer receiving a FAPE. The effects of bullying could include adverse changes in the student's academic performance or behavior.

If the Team determines that the student's needs have changed, the Team must determine the extent to which additional or different services are needed. If the Team is considering a change of placement, the Team must ensure that the Section 504 least restrictive environment requirements are met. The Team must safeguard against "putting the onus on the student with the disability to avoid or handle the bullying". Dear Colleague Letter: Responding to Bullying of Students With Disabilities (United States Department of Education, Office for Civil Rights (October 21, 2014).

C. In one of the frequently cited judicial cases where bullying was addressed as an IDEA FAPE issue, the Court established the standard to be applied in such an analysis.

In this case, the Court refused to grant the school district's Motion for Summary Judgment regarding the alleged denial of FAPE based on bullying. A student with a specific learning disability alleged that she was bullied in school. The parents met with the principal to discuss their concern about bullying but were told to leave the principal's office. Afterwards, the parents brought up the issue at the IEP meeting but again were told by the principal that it was not an appropriate topic for the IEP Team.

Both the hearing officer and the state review officer concluded that the student's IEP was reasonably calculated to enable the student to receive educational benefits.

The Court found that neither the hearing officer nor state review officer properly considered the relationship of the bullying allegation to the provision of FAPE.

The Court stated:

> The rule to be applied is as follows: When responding to bullying incidents, which may affect the opportunities of a special education student to obtain an appropriate education, a school must take prompt and appropriate action. It must investigate if the harassment is reported to have occurred. If harassment is found to have occurred, the school must take appropriate steps to prevent it in the future. These duties of a school exist even if the misconduct is

> covered by its anti-bullying policy, and regardless of whether the student has complained, asked the school to take action, or identified the harassment as a form of discrimination.
>
> It is not necessary to show that the bullying prevented all opportunity for an appropriate education, but only that it is likely to affect the opportunity of the student for an appropriate education. The bullying need not be a reaction to or related to a particular disability. (emphasis added)

T.K. v. New York City Department of Education 779 F.Supp.2d 289, 56 IDELR 228 (United States District Court, Eastern District, New York (2011)). The case was remanded back to the hearing officer.

On remand, the District Court reversed the hearing officer's and state review officer's decisions and concluded the student was denied a FAPE due to being the victim of bullying.

The Court stated that "a disabled student is deprived of a FAPE when school personnel are deliberately indifferent to or fail to take reasonable steps to prevent bullying that substantially restricts" the educational opportunities of the student with disabilities. The conduct does not need to be outrageous in order to be considered a deprivation of rights of a disabled student. It must, however, be
sufficiently severe, persistent, or pervasive that it creates a hostile environment. Where there is a "substantial probability that bullying will severely restrict a disabled student's educational opportunities, as a matter of law an anti-bullying program is required to be included in the IEP".

The Court concluded in this case the fact that the IEP Team refused to take bullying into account when drafting the student's IEP and behavior intervention plan denied a FAPE. When the student's parents sought to raise the bullying problem as it related to her educational needs and opportunities during the IEP Team meeting they were told that it was not an appropriate topic for the meeting. The IEP team's refusal to allow the parents to raise their legitimate concerns about bullying as it related to her FAPE deprived them of meaningful participation in the development of her IEP.

The Court also reviewed the goals and services in the IEP and BIP and observed that "a lay parent would not have understood them as reasonably calculated to provide a FAPE" in light of the bullying that occurred. The law requires that "the substance of the IEP must be intellectually accessible to parents" so that they could make an informed decision as to its appropriateness.

Lastly, the Court found that the student's learning opportunities were restricted by bullying which was an additional ground for finding that

FAPE was denied. The student complained almost daily, withdrew emotionally, started bringing dolls to school for comfort, and was late or absent a for 46 days during the school year because she didn't want to go to school. Although she improved academically, the Court observed that academic growth is not an "all or nothing proposition".
The Court ordered that the parents be reimbursed for their unilateral private placement as a result. T.K. v. New York City 63 IDELR 256 (United States District Court, Eastern District, New York (2014)).

D. The parents of a student with a specific learning disability, a post traumatic stress disorder and a generalized anxiety disorder initiated a due process hearing alleging that their student was denied a FAPE due to bullying and an inappropriate reading program. The Court, in affirming the hearing officer, held that the student was not denied a FAPE as a result of being bullied. In reaching its conclusion, the Court noted that the school took steps to eliminate a culture of harassment and bullying. Although the school could have implemented additional measures, it was not indifferent and appeared willing to take further actions. The IEP team drafted an IEP that "contained significant changes to address the social/emotional needs of the student." The IEP also provided a Behavioral Intervention Plan providing for coping skills, social skills, and self-regulating breaks. N.M. v. Central Bucks School District 62 IDELR 237 (United States District Court, Eastern District, Pennsylvania (2014)).

E. The parents of a student with Tourette Syndrome filed a lawsuit against the school district, claiming it violated the ADA and Section 504. They claimed the school was deliberately indifferent to peer-to-peer harassment on the basis of the student's disability and that the school intentionally discriminated against the student.
The parents allege several specific examples of bullying that occurred during the student's 5th, 6th, and 7th grade years and other more general instances that spanned the entire period from K through 7th grade. The general instances mostly involved name-calling. Students allegedly called the student with a disability "retard, chickenhead, twitch, tic-toc, and spaz." The student stated that he frequently reported the name-calling, but was told to stop being a tattle-tale. One teacher stated that she sent some students to the principal's office for name-calling on one occasion, but that they were never punished. In a Section 504 or ADA peer-to-peer harassment case, a student must demonstrate a genuine issue of material fact as to the following: (1) he was an individual with a disability, (2) he was harassed based on his disability, (3) the harassment was sufficiently severe or pervasive that it altered the condition of his education and created an abusive educational environment, (4) the school knew about the harassment, and (5) the school was deliberately indifferent to the harassment.
The Court stated "that the deliberate indifference standard does not require

schools to "purge" themselves of harassment and that the standard grants a high level of deference to a school's judgment." In this case, the Court held that the school was not deliberately indifferent. The principal's testimony supported the fact that she investigated the reported behaviors and the rationale for disciplining some students and not others. In addition, the school district provided, to students and teachers, training to counter bullying. That training was conducted using "two nationally-recognized programs designed to teach kindness and compassion to students." The Court also held that there was insufficient evidence that the student was ever removed from class due to intentional discrimination based on his disability. Nevills v. Mart Independent School District 115 LRP 17173 (United States Court of Appeals, 5th Circuit (2015)). Note: This is an unpublished decision.

IX. Liability Issues

A. A former high school student with autism is now 20 years old and attending college. He signed a Delegation of Rights, as provided under state law, giving his parents the authority to act on his behalf in making educational decisions when he became an adult student.

The student and parents alleged that when in high school the student was not provided the accommodations stated in his IEP and school personnel ignored the parents phone calls and attempts to schedule meetings and ignored eight requests to view their student's educational records. As a result they alleged the student started failing his courses, became anxious, and suffered headaches and nausea which caused him to miss school. The parents hired a private tutor for the student as a result.

A due process hearing was requested. The hearing officer dismissed the request due to the failure of the parents to comply with pre-hearing requirements.

The parents then sued the former school district, teachers and administrators, both in their official and personal capacity, under Section 1983, the IDEA, Section 504, the ADA and the 14th Amendment. The District Court dismissed the lawsuit holding that the parents lacked legal standing since the claims were based on the IDEA and all IDEA rights reverted to the student when he turned 18.

The Court of Appeals reversed the dismissal holding that the Delegation of Rights provided them legal authority and the allegations included claims that their parental rights were violated regarding participation in meetings and access to their student's educational records. In addition, they were seeking reimbursement for the private tutor they had paid for. The allegations were also sufficient to support a retaliation claim under Section 504 and the ADA.

The Court affirmed the dismissal of Section 504 and ADA claims against staff in their personal capacity. However the Court held the IDEA claims against school personnel in their personal capacity should not have been

dismissed. The Court stated "We draw the line, however, at the IDEA claims, which should have gone forward at this stage. We have not found a decision from any circuit holding that individual school employees cannot be personally liable for violating IDEA." The case was remanded back to the District Court for further proceedings. Stanek v. St. Charles Community Unit School District #303 115 LRP 15369 (United States Court of Appeals, 7th Circuit (2015)).

B. The parents of a first grade student with disabilities initiated a lawsuit for monetary damages under Section 1983 against their student's special education teacher and special education aide based on the allegation that they "intentionally grabbed and/or pinned ... [N.R.], in an overly aggressive manner, resulting in physical marks and bruises upon his person ....". In addition, they sued the school district and school building administrators for negligence in their hiring, training, and supervisory practices.

The defendants filed a Motion to Dismiss contending that they were protected by qualified immunity. Based on Supreme Court case law, a government official or employee is entitled to qualified immunity against claims for "civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." The two-part test for determining whether a government official is entitled to qualified immunity is: (1) whether the facts that a plaintiff alleges demonstrate a violation of a constitutional right; and (2) whether the right at issue was "clearly established" at the time of the alleged misconduct.

The Court held that the special education teacher and aide were not protected by qualified immunity. For purposes on the motion, which requires the Court to accept the factual assertions as true, the conduct alleged is such that "it would have been apparent to the special educators that the use of egregious force against a special needs student is unlawful". The Court, however, dismissed the claims against the administrators. Under Section 1983, a supervisor is liable for the acts of his/her subordinates only "'if the supervisor participated in or directed the violations, or knew of the violations [of subordinates] and failed to act to prevent them." In this case, the facts did not demonstrate that the alleged administrative failures caused the constitutional violation at hand. Nor were there factual allegations that the administrators were previously aware of the teacher's or aide's conduct and did nothing to prevent it. Rosenstein v. Clark County School District 63 IDELR 185 (United States District Court, Nevada (2014))

C. The parents of a 12th grade student sued the school district on several grounds including alleged discrimination against their student under Section 504. Monetary damages were sought.

The student has autism and an intellectual disability. The student had

episodes in which he entered what was referred to as a "shut down mode," a behavior related to the student's autism during which he became largely nonresponsive to efforts at instruction or communication.
The basis of the lawsuit was conduct by the classroom's paraprofessional who on three occasions misguidedly tried to rouse the student from "shut down mode" with inappropriate verbal commands and physical contact. The paraprofessional knocked the student's feet off of his chair, grabbed him by the arm, shook him, yelled at him and struck him in the forehead with the palm of her hand. A meeting was held with the parents the next day and while the investigation was pending the paraprofessional was transferred to another classroom and had no further contact with the student.
The student did not require medical or psychological treatment as a result of any of these incidents, nor did he miss any time at school. He contends that as a long-term result of the abuse, however, his language ability regressed, he engaged in self harm, and he developed aggressive behavioral tendencies, ultimately resulting in his withdrawal from school.
The Court granted the school district's Motion for Summary Judgment. In seeking compensatory damages on a Section 504 claim, there must be proof that the discrimination at issue was intentional. The Court held that the parents failed to provide evidence of intentional discrimination. There was no evidence the school district ignored or otherwise minimized the incidents. The school met with the parents, resolved to investigate and responded promptly and appropriately by removing the paraprofessional from the classroom. Shadie v. Hazelton Area School District 114 LRP 39550 (United States Court of Appeals, 3rd Circuit (2014)).

D. The Director of Special Education initiated contact with social services reporting that, based on teachers' statements and statements from the student, she had reason to believe that the father of a student with an intellectual disability engaged in inappropriate physical behavior with the student. After investigating the report, social services found that the abuse allegations in the report were unsubstantiated.
The parents then initiated a Section 1983 cause of action against school staff alleging retaliation based on the 1st Amendment in response to their advocacy and deprivation of substantive due process. The claims against the staff, except for the Director of Special Education, were dismissed.
The Court of Appeals, affirming the District Court, held that the Director was not entitled to qualified immunity. The Court found that the parents' allegations established that the Director was motivated at least in part by the father's advocacy on behalf of his student in filing the child abuse report. Even though the Director was a mandated reporter of abuse under state law, the Court stated it does not conclusively establish that she would have initiated the abuse report absent the father's strong advocacy on behalf of his daughter. The case will proceed to trial. Wenk v. O'Reilly 115 LRP 16032 (United States Court of Appeals, 6th Circuit (2015)).

X. Procedural Safeguard/Due Process Issues

A. "Stay Put" Cases

1. The parents of a student with a disability filed for a due process hearing seeking reimbursement of their unilateral private placement. The hearing officer concluded that the student was denied a FAPE and ordered the public school to reimburse the parents for the private school tuition. On appeal, the District Court reversed and found that the IEP for the student was appropriate. The Court of Appeals, noting that the Circuits are divided on the issue, held that the "stay put" provision of the IDEA continues to apply through the end of the appeals process. Here, since the hearing officer found that reimbursement was a proper remedy, the school district was obligated to continue to pay for the private placement while the District Court's contrary decision was being appealed. M.R. v. Ridley School District 744 F.3d 112 (United States Court of Appeals, 3rd Circuit (2014)). Petition to appeal to the United States Supreme Court denied.

2. The parents of a 15 year old student who is autistic attending a charter school requested a due process hearing. The charter school initiated a request in Court for a temporary injunction changing the "stay put" placement of the student due to dangerousness.
The evidence showed that the student, despite always being accompanied by a teacher or an aide, assaulted at least one student, that student's parent, and his own teacher or aide. He had bit, leaving substantial teeth marks, scratched, grabbed, hit, and has pulled out a chunk of hair. He has also engaged in self-injurious behaviors. The charter school hired a behavioral specialist to try to work with the student on his violent tendencies with limited success. The student's special education teacher resigned and the charter school has been unable to find a new teacher to work with the student.
The Court granted the school's motion holding that the school will suffer "irreparable injury" if the stay put placement is not changed since the student poses a substantial risk of harm to other students and staff. The Court ordered that the student attend a self-contained class for students with behavior disabilities in the local public high school as the "stay put" placement. Seashore Charter Schools v. E.B. 64 IDELR 44 (United States District Court, Southern District, Texas (2014)).

3. The parents of a student with a disability were divorced and shared joint legal custody. The IEP Team changed the student's placement

from primarily a regular education classroom to a split program of a regular education class and resource room class. The mother of the student agreed with the proposed placement change, however, the father of the student disagreed and filed a due process hearing complaint.

The hearing officer agreed that the split program was appropriate for the student. The father sought a stay of the decision in District Court pursuant to the "stay put" provision. The Court denied the request to stay the implementation of the IEP. The Court of Appeals vacated the District Court's decision and ordered it to address the question of whether a single parent's consent to an IEP is sufficient to enable the school district to implement the IEP notwithstanding the other parent's objection.

The Court was asked to specifically interpret the stay put provision at 34 CFR 300.518(d) which states: "If the hearing officer….agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement" for stay put purposes. (emphasis added)

The Court held that the stay put provision was not intended to hinder a change of placement when a parent agrees with the hearing officer and the school district that the change is appropriate. The Court noted that although the stay put regulations use the term "parents" the Comments to the regulations contemplated that only one parent would be necessary to approve a change of placement for stay put purposes. Sheils v. Pennsbury School District 115 LRP 3687 (United States District Court, Eastern District, Pennsylvania (2015)).

4. A student with a disability was placed by his IEP Team in a private out of district special education school. The family then moved to another school district within the same state and provided the new school district the student's IEP. The staff from the new school district met with the parents and offered "comparable services" within the new school district's programs.

The parents filed a due process hearing request. They immediately sought an order from the administrative law judge (ALJ) under the "stay put" provision which would require the new school district to fund the student's program and provide transportation to the private special education school while the hearing was pending. The ALJ denied the parents' request concluding that the offer of services in the new school district's program was comparable to those provided by the private school.

The Court affirmed the ALJ's ruling. The Court noted that the IDEA requires, in cases of intra-state transfers, the new school district to consult with parents and offer comparable services. A comparable program that offers similar or equivalent educational

services that will not significantly impact a child's learning does not trigger the "stay put" provision. J.F. v. Byram Township Board of Education 64 IDELR 178 (United States District Court, New Jersey (2014)).

B. Mediation/Attorney Fees

1. The parents prevailed in a due process hearing regarding their son and initiated a lawsuit against the school district for attorney's fees. The attorney petitioned the Court for fees incurred including the time spent to prepare for and participate in an unsuccessful mediation session held over a year after the due process hearing complaint was filed.
The school responded to the lawsuit claiming that the Court cannot award attorney's fees related to the unsuccessful mediation session since the IDEA prohibits attorney fee reimbursement for resolution meetings.
The Court held that the parents' attorney was entitled to fees for time spent in preparing for and participating in the mediation session. The Court distinguished between a mediation session held in lieu of a resolution session (which must be held within 15 days after the filing of the due process complaint) and a mediation session held over a year after the complaint was filed. In such case, the Court concluded that the mediation cannot be considered a "preliminary resolution session" and therefore the IDEA's prohibition did not apply. Board of Education of Evanston Skokie Community Consolidated School District 65 v. Risen 114 LRP 28627 (United States District Court, Northern District, Illinois (2014)). See also S.D. v. Portland Public Schools 114 LRP 52637 (United States District Court, Maine (2014)).

C. Statute of Limitations

1. A former student with a disability, now 25 years old, brought actions under the IDEA, Section 504, Section 1983 and state law asserting that his former school district failed to provide him with appropriate special education programs and services during his entire 16 years as a student in the school district and discriminated against him on the basis of disability.
The former student initiated a due process hearing in 2010. The hearing officer (HO) and state review officer (SRO) dismissed the IDEA claims over two years old as time-barred, dismissed other claims on jurisdictional grounds or on the merits, and awarded plaintiff compensatory relief for his remaining claims. The former student appealed.

The Court concluded that the HO and SRO erred in summarily dismissing all of the IDEA claims before the 2008-09 school year as time-barred because the former student asserted a timely IDEA claim spanning his entire educational career. Among his claims, he asserted that the school district failed to identify, diagnose, and address his learning disabilities. This claim did not accrue until 2010, when he obtained an independent evaluation that diagnosed him with specific learning disabilities. Under the IDEA claims accrue when the parent/adult student "knew or should have known" about the claim. Until that point, he could not have been aware of his claim challenging the adequacy of the school's prior evaluations. Nor could he have been aware of his related claim that the school, acting on inadequate evaluations, placed him in settings that were inappropriate for his particular needs, including classes for emotionally disturbed and intellectually disabled children. This claim covers all of the years in the school district and goes to the heart of whether the school district provided him a free appropriate public education during those years. Since this claim did not accrue until 2010, it falls within the IDEA's statute of limitations and precludes dismissal of plaintiff's claims regarding any of the school years from 1994-95 onward. K.H. v. New York City Department of Education 114 LRP 34730 (United States District Court, Eastern District, New York (2014))

D. Resolution Meetings

1. The parents requested a due process hearing on behalf of their student. The parties agreed to convene a resolution meeting. In addition the parents, the Superintendent, the Director of Special Education and other school staff attended the meeting.
At the resolution meeting, the school agreed to start the special education evaluation process and in response to the parents' request for an independent educational evaluation, the Director indicated that the school would do so if approved by the School Board.
The parents filed a second due process hearing alleging that the school violated the IDEA's requirement that a resolution meeting include "a representative of the public agency who has decision making authority on behalf of that agency". (see 34 CFR 300.510(a)(1)(i)). At the hearing the Superintendent testified that he was there to listen and that the "[f]inal authority is with the Board as far as whether or not it could be resolved[,]".
The Court agreed with the hearing officer that the school did not comply with the IDEA's resolution meeting requirements. The Court stated that the Superintendent or some other administrator satisfies the statutory requirement only if he or she, in fact, has the

authority -- by express delegation or otherwise -- to make the decision about what the school will or will not do to resolve the issues presented in the IDEA complaint. The IDEA statute clearly contemplates the resolution session as just that -- a meeting at which the school and parents can reach a resolution because those with the authority to decide are participants.

However, the Court disagreed with the hearing officer's conclusion that this procedural violation resulted in a denial of FAPE. The Court concluded that in the absence of evidence of what would have resulted from a properly-constituted resolution meeting, there is no basis for concluding that this procedural violation caused a deprivation of educational benefits, impeded the student's right to a FAPE, or significantly impeded his parents' opportunity to participate in the decision-making process. J.Y. v. Dothan City Board of Education 63 IDELR 33 (United States District Court, Middle District, Alabama (2014)).

E. Due Process Hearing Time Limits

1. An attorney who represents parents asked OSEP to review a "guideline" issued by a state's Office of Administrative Hearings, which states that, "[i]n all but exceptional circumstances, evidentiary hearings should be concluded within three hearing days of six hours each."

   The attorney described a hearing during which the ALJ informed the parties in advance of the hearing and at regular intervals throughout the hearing that each party would be granted nine hours of hearing time to present testimony and conduct cross-examination. It was alleged that the effect of the time limitation to eighteen hours (total) was that parents were deprived of the opportunity to present testimony in support of their claims and counsel was not permitted to cross-examine any of the other party's witnesses.

   OSEP stated that the guideline appears, on its face, to be consistent with the requirements of the IDEA because it permits a hearing officer to extend the time limitation for evidentiary hearings under "exceptional circumstances". If a party felt their rights to a due process hearing were violated, the appropriate course of action would be to appeal the matter to a court. Letter to Kane 115 LRP 3525 (United States Department of Education, Office of Special Education Programs (2015)).

F. State Administrative Complaints

1. It is not consistent with the IDEA for the SEA to assign the burden of proof to either party when handling a state administrative

complaint. It is solely the SEA's duty to investigate the complaint, gather evidence and make a determination as to whether a public agency violated the IDEA. It is not the burden of either party to produce evidence to persuade the SEA to make a determination one way or another.
It is consistent with the IDEA for a state to use the "preponderance of evidence" standard in making the independent determination in a state complaint. Letter to Reilly (United States Department of Education, Office of Special Education Programs (2014)).

2. A school district and a county office sued the state department of education alleging that the department violated IDEA requirements when handling state administrative complaints. In one case, the state department of education reconsidered its decision twice eventually finding merit to the parent's complaint. The school district also alleged that the department imposed a burden of proof on the school district when it should have been imposed on the parents.
The Court held that school districts "lack an implied right of action in the context of complaint resolution proceedings". Therefore, the case was dismissed.
The Court commented that whether parents have an implied right of action to sue state education agencies for violating the IDEA in complaint resolution proceedings was not an issue before the Court and therefore the Court was silent regarding a parent's right to bring such an action. Fairfield-Suisun Unified School District v. California Department of Education 115 LRP 10958 (United States Court of Appeals, 9th Circuit (2015).

3. The U.S. Office of Special Education and Rehabilitative Services (OSERS) issued a letter raising concern over the practice that some school districts have engaged in by requesting a due process hearing after the parents have filed a state administrative complaint. The IDEA requires that if a complaint is received that is also the subject of a due process hearing, the state must set aside any part of the state complaint that is being addressed in the due process hearing until the hearing officer issues a final decision or dismisses the due process complaint. (See 34 CFR 300.152(c)(1))
OSERS stated that the purpose of such practice was "ostensibly to delay the state complaint process and force parents to participate in, or ignore at considerable risk, due process complaints and hearings. Increased costs and a potentially more adversarial and lengthy dispute resolution process are not in the best interest of children with disabilities and their families."
OSERS "strongly encourage" school districts to respect the parents' choice of dispute resolution forums by using the state

complaint process rather than a due process hearing. Dear Colleague Letter 65 IDELR 151 (United States Department of Education, Office of Special Education and Rehabilitative Services (2015))

XI. Section 504/ADA Issues

A. The parents withdrew consent for their student to receive IDEA services, but requested that the school provide him with accommodations under Section 504 of the Rehabilitation Act of 1973. The school informed the parent that it would not provide Section 504 accommodations because of the withdrawal of consent for IDEA services.
The Court held that the parent's revocation of consent for services under IDEA was tantamount to revocation of consent for services under Section 504 and the ADA. The Court based its ruling on the United States Office for Civil Rights (OCR) letter that stated "by rejecting the services developed under the IDEA, the parent would essentially be rejecting what would be offered under Section 504". See Letter to McKethan, 25 IDELR 295 (Office for Civil Rights (1996)). The parents offered no judicial or administrative decision that called the OCR's position into doubt. Therefore, the parent could not compel the district to develop a plan under Section 504 for their student .Lamkin v. Lone Jack C-6 School District 58 IDELR 197 (United States District Court, Western District, Missouri (2012)).

B. The parents of a student with a disability revoked consent for continued IEP services under the IDEA. After the revocation was received, the school held a Section 504 meeting where it proposed a Section 504 plan that was substantively equivalent to the previously proposed IEP.
The Court held that revocation of consent under the IDEA does not impact the school's obligation under Section 504. Therefore, the school was required to convene a Section 504 meeting and develop a 504 plan after the parents revoked consent for IDEA services. Although the Court upheld the proposed Section 504 plan, it stated that the school has a "continuing obligation under Section 504 and the ADA to protect [the student] from discrimination while she remains a qualifying student with a disability, and therefore must continue to offer any accommodations or services required to ensure that [the student] is provided an opportunity for a FAPE under Section 504. " Kimble v. Douglas County School District 925 F.Supp.2d 1176, 60 IDELR 221 (United States District Court, Colorado (2013)). See also D.F. v. Leon County School Board 62 IDELR 167 (United States District Court, Northern District, Florida (2014)).

C. A 6 year old student with multiple disabilities who has cerebral palsy, spastic quadreparesis, and a seizure disorder; is non-verbal and confined to a wheelchair; and needs care and support for all aspects of daily living and

education. Prior to development of the student's IEP which placed him in a special education kindergarten program, the student's parent paid to find and train a seizure alert and response service dog for the student.
Neither the student's health care plan nor his IEP includes his use of a service dog at school although he has been allowed to attend school with his service animal. The school district took the position that it was not responsible for the care or supervision of a service animal, which includes handling the service animal based on the ADA's regulations.
The parents initiated a lawsuit under Section 504 and the ADA requesting that the school permit the student to attend school accompanied by his service dog without having to provide a separate "handler" for the dog and without having to pay for additional liability insurance and additional vaccinations. Considering the student to be the dog's "handler", the parent further asked the school to accommodate him by accompanying him and the animal outside of the school premises when the dog needed to urinate.
The ADA regulations state, in relevant part, that the service animal "shall be under the control of its handler". In addition, the regulations clarify that "a public entity is not responsible for the care or supervision of a service animal". See ADA regulation at 28 C.F.R. 35.136(d) and (e).
The Court held that the school board's policy requirement that the parent maintain liability insurance for the service animal and procure vaccinations in excess of the requirements under state law is a surcharge prohibited by the ADA. Those requirements, therefore, constitute an impermissible discriminatory practice.
In addition, The Court held that the accommodation requested (taking the student and service dog outside when the dog needed to urinate) under the facts presented were reasonable accommodations under the ADA. The Court ordered the School Board to accommodate the student (through its staff) by assisting him and accompanying the service dog outside of the school premises to urinate at the infrequent occasions when needed.
The Court based its ruling on an additional ADA regulation which requires that a public entity "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. 35.130(b)(7).
Alboniga v. School Board of Broward County 115 LRP 5982 (United States District Court, Southern District, Florida (2015))

D. The parents of a student with Type 1 diabetes sued their former school district alleging discrimination on the basis of disability based on Section 504. The student's 504 plan incorporated the student's Doctor's order and required that three staff members be trained by the school to administer insulin to the student and to monitor and respond to alarms from his glucose monitor.
The school hired a licensed nurse to perform the necessary diabetes care

for the student. The nurse resigned after a personnel dispute with her supervisor and another nurse was assigned to provide the student with care.

Due to a mix-up regarding new orders from the Doctor, the school did not follow the new order. The parents were unhappy with the school's refusal to adjust the insulin dosage at their request. The parents removed their student from public school and filed a lawsuit based on Section 504 discrimination alleging the services in the 504 plan were not fully implemented.

The Court held that there was no violation of Section 504. The Court stated "for 504 plan violations to constitute disability discrimination, they must be significant enough to effectively deny a disabled child the benefit of a public education". Even though three staff members were not trained as the 504 plan required, a nurse provided the services to the student with the exception of one day which the Court termed a "minor violation". In addition, since the Doctor did not provide clear orders, the school did not act unreasonably in refusing to alter the recommended doses of insulin as the parent had requested. C.T.L. v. Ashland School District 743 F.3d 524, 62 IDELR 252 (United States Court of Appeals, 7th Circuit (2014)).

E. The Office for Civil Rights issued guidance reminding charter schools that Federal civil rights laws, regulations, and guidance that apply to charter schools are the same as those that apply to other public schools. For this reason, it is essential that charter school officials and staff be knowledgeable about Federal civil rights laws including Section 504. These laws extend to all operations of a charter school, including recruiting, admissions, academics, educational services and testing, school climate (including prevention of harassment), disciplinary measures (including suspensions and expulsions), athletics and other nonacademic and extracurricular services and activities, and accessible buildings and technology.

Under Section 504, every student with a disability enrolled in a public charter school must be provided a free appropriate public education–that is, regular or special education and related aids and services that are designed to meet his or her individual educational needs as adequately as the needs of students without disabilities are met.

Charter schools may not ask or require students or parents to waive their right to a free appropriate public education in order to attend the charter school. Additionally, charter schools must provide nonacademic and extracurricular services and activities in such a manner that students with disabilities are given an equal opportunity to participate in these services and activities. Dear Colleague Letter (United State Department of Education, Office for Civil Rights (2014)).

F. The parents of several students with disabilities filed a lawsuit under Section 504 and the Americans With Disabilities Act seeking

compensatory and punitive monetary damages for a school district's alleged failure to implement their students' IEPs.
The Court of Appeals, in reversing the lower court, held that exhaustion of administrative remedies (pursuing due process hearings) was not required. The Court stated that a claim that a school district "failed to implement specific IEP requirements need not be exhausted". The lawsuit will now proceed to trial. Stropkay v. Garden City Union Free School District 64 IDELR 193 (United States Court of Appeals, 2nd Circuit (2014)). Note: This is an unpublished decision.

G. The United States Departments of Education and Justice issued a joint guidance document regarding a public school's responsibility to provide effective communication to individuals with disabilities under the IDEA, Section 504 and the Americans With Disabilities Act (ADA), Title II applying to all state and local government entities.
Title II of the ADA requires that public schools ensure that communication with students with hearing, vision or speech disabilities is as effective as communication with students without disabilities. Schools must provide "auxiliary aids and services", if necessary, giving primary consideration to the request of the individual with a disability unless the school provides written justification that it would result in a fundamental alteration of the program, service or activity or in an undue financial and administrative burden. For students who are eligible for IEP services, the auxiliary aids and services required under Title II may be more than what is required in an IEP.
The guidance also clarifies that the Title II requirements apply to other individuals with disabilities such as parents or member of the public in activities such as parent-teacher conferences, ceremonies and performances. Frequently Asked Questions on Effective Communication for Students With Hearing, Vision or Speech Disabilities in Public Elementary and Secondary Schools (United States Departments of Education and Justice (2014)).

H. The parent of a student with a speech and language disability disagreed with the school district's evaluation which concluded that his student also fell on the autism spectrum. He asked that the evaluation be removed from his student's educational records. The school refused maintaining that the evaluation was proper.
Subsequent email communications with staff alleged that his student was not receiving the services specified in her IEP and that staff was acting illegally and unethically by falsifying records.
Ultimately, the school district's attorney sent an email to the parent instructing him to direct all future communications with the school through the attorney since staff felt "extremely anxious and threatened" by the parent. The attorney suggested that a meeting be set up to discuss the parent's concerns but the parent unilaterally canceled the meeting.

The school then filed for a Temporary Restraining Order on three occasions. The Superior Court denied the school's request.
The parent then filed a lawsuit against the school district and staff alleging that he had been subject to retaliation in violation of Section 504 and the ADA for advocating for his student. The lawsuit was seeking monetary damages for retaliation.
The Court refused to grant the school district's Motion for Summary Judgment holding that the alleged disputed facts presented triable issues precluding summary judgment. Lee v. Natomas Unified School District 115 LRP 8673 (United States District Court, Eastern District, California (2015)).

I. The Court of Appeals held that the Americans with Disabilities Act (ADA), Title II (which applies to public accommodations) did not require a school district to structurally alter public seating at a high school football field, where the seating was constructed in 1971 prior to the ADA's enactment.
In contrast to newly constructed or altered facilities, a public entity's existing facilities—those facilities constructed prior to January 26, 1992—need not be "accessible to and usable by individuals with disabilities." (see ADA regulation, 28 C.F.R. Section 35.150(a)(1)). Rather, with respect to existing facilities, a public entity need only provide program access, by "operat[ing] each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities."
Here, the school district did provide program access to individuals who use wheelchairs. The school district did designate three specific locations from which persons who use wheelchairs are able to watch football games. The school district also permits spectators who use wheelchairs to sit on the north and south sides of the field, on the paved area, at any point along the fence. Daubert v. Lindsay Unified School District (United States Court of Appeals, 9th Circuit (2014)).

J. The parent of a 7 year old student with multiple disabilities asked that the school district to provide transportation for her student after school to a special daycare for children with special medical needs in order to allow her to work. The daycare was located out of the school district boundaries. It was the only daycare that had the medical and nursing services needed by the student.
The school district refused the request since the school district policy limited transportation for students between their school and their daycare facilities to only located within the school district boundaries and the school's attendance zone.
The parent filed for a Section 504 hearing alleging that the school district discriminated against the student by failing to reasonably accommodate his need for special transportation. The hearing officer ruled in favor of

the school district.

On appeal, the Court affirmed. The Court observed the only reason the student needed this special transportation arrangement was to accommodate the parent's employment needs not the student's needs. Therefore, the parent did not prove that the student was subjected to discrimination under Section 504 or the ADA.

Note: The school district did not dispute that if the student's IEP called for placement at the daycare center it would be obligated under the IDEA to provide the transportation to and from the daycare center. S.K. v. North Allegheny School District 65 IDELR 65 (United States District Court, Western District, Pennsylvania (2015)).

Note: This outline is intended to provide workshop participants with a summary of selected Federal statutory/regulatory provisions and selected judicial interpretations of the law. The presenter is not, in using this outline, rendering legal advice to the participants. The services of a licensed attorney should be sought in responding to individual student situations.