Hot Topics in Special Education Law -2017

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Christopher Borreca

Thompson & Horton LLP
3200 Southwest Freeway
Suite 2000
Houston, Texas 77027

Thompson & Horton LLP
ATTORNEYS | COUNSELORS

Endrew F. and Beyond

Endrew F. v. Douglas Cnty School District Re-1
69 IDELR 174 (U.S. 2017)

Rather than adopting a bright-line rule for determining the substantive adequacy of any given IEP, the Court ruled that a child's program must be "appropriately ambitious" in light of his unique circumstances. This means that districts must develop sufficiently challenging programs for all IDEA-eligible students, regardless of the severity of their disabilities.

Paris School District v. A.H.
117 LRP 12828 (W.D. Ark. - April 3, 2017)

If a district does not understand why a student engages in certain behaviors, it cannot offer service providers effective strategies to address them. Although a BIP from the student's previous LEA identified her problem behaviors as verbal disruptions, physical aggression, property destruction, and elopement, the BIP at issue here focused solely on "noncompliance."

E.D. v. Colonial School District
117 LRP 12348 (E.D. Pa. - March 31, 2017)

An administrative decision issued prior to the U.S. Supreme Court's ruling in *Endrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017), may still be valid if the IHO applied a sufficiently rigorous standard of FAPE. Although this child was not proficient in all academic areas by the end of the year, she made progress in skills relating to reading, writing, and math. That progress was appropriate in light of the child's age and the district's ongoing assessment of her disability-related needs.

M.M. New York City Department of Education
117 LRP 11565 (S.D.N.Y. - March 30, 2017)

Under Section 504, a parent can claim a denial of FAPE if the district acted with bad faith or gross misjudgment. In this case, a parent's claims that a district discriminated against her child by not recommending services that would enable her to gain equal benefit from education were not enough to show bad faith or gross misjudgment.

A.G. and J.G. v. Board of Education of the Arlington Central School District

117 LRP 11582 (S.D.N.Y. - March 29, 2017)

IEPs do not have to be ideal to meet IDEA requirements, but they do have to be reasonable. To meet IDEA obligations, districts must offer IEPs that are reasonably calculated to enable students to make progress that is appropriate in light of the students' circumstances.

C.D. v. Natick Public School District
117 LRP 11418 (D. Mass. - March 28, 2017)

The impact of *Endrew F.* in jurisdictions that previously applied a "some educational benefit" standard of FAPE is not entirely clear. If a district interpreted that standard to mean educational benefits that are appropriate in light of a student's circumstances, its IEPs should stand up to scrutiny.

M.C. v. Antelope Valley Union High School District
117 LRP 11142 (9th Cir. 2017)

This case makes clear that a parent's right to meaningful participation does not end when the document is signed; she also has a right to monitor and enforce the provision of special education services. Although the amended IEP quadrupled the amount of services the student would receive from a "teacher of the visually impaired," the parent did not learn of that change until the following month.

Section 504: *Fry* and Beyond

Fry v. Napoleon Community Schools
69 IDELR 116 (U.S. 2017)

The Court identified two questions to consider in assessing a complaint's connection to FAPE and whether exhaustion is necessary: 1) whether the student could assert the same claim against a non-educational public facility; and 2) whether an individual other than a student could assert the same claim against the district. If the answer to both questions is yes, the Court explained, it is unlikely that the complaint relates to the provision of FAPE.

J.M. v. Francis Howell School District
69 IDELR 146 (8th Cir. 2017)

The IDEA's exhaustion of administrative remedies requirement applies to any claim premised on a denial of FAPE, regardless of how the complaint is worded. *Fry v. Napoleon Cmty. Schs.*, 69 IDELR 116 (U.S. 2017). A parent must use the administrative process for any non-IDEA claim alleging a denial of educational benefits before suing in court.

M.M. New York City Department of Education
117 LRP 11565 (S.D.N.Y. - March 30, 2017)

Under Section 504, a parent can claim a denial of FAPE if the district acted with bad faith or gross misjudgment. In this case, a parent's claims that a district discriminated against her child by not recommending services that would enable her to gain equal benefit from education were not enough to show bad faith or gross misjudgment.

Chadam v. Palo Alto Unified School District
69 IDELR 2 (9th Cir. 2016)

A district cannot exclude a student with a disability for health or safety reasons without first conducting an individualized assessment. This assessment must include a review of medical documentation that the parents submit on the student's behalf.

Miller v. Monroe School District
67 IDELR 32 (W.D. Wash. - Feb. 3, 2016)

IEP teams should think twice about including aversive interventions in students' behavior plans. Staff members' reliance on aversives as a behavior management technique could potentially qualify as disability discrimination.

Service Animals

United States of America v. Gates-Chili Central School District

68 IDELR 70 (W.D.N.Y. – July 28, 2016)

The scope of the Title II regulation requiring a service animal to be "under [the] handler's control" is not entirely clear. This ruling indicates that a student's ability to serve as a handler depends on the amount of assistance she requires.

Riley v. School Administrative Unit #23
67 IDELR 8 (D.N.H. - Jan. 14, 2016)

A district's obligation to provide adult assistance to a student with a service animal may depend on whether the student qualifies as the animal's "handler" under Title II. While a district may sometimes need to provide assistance with routine care such as feeding or walking, *see Alboniga v. School Board of Broward County, Fla.*, 65 IDELR 7 (S.D. Fla. 2015), this ruling suggests that a district has no obligation to provide a full-time handler for the animal.

Transportation Issues

Fernandez v. City of New York
68 IDELR 50 (N.Y. Sup. Ct. - June 29, 2016)

Whether a district transports students itself, or contracts with a private company, it cannot disregard reports of violent behavior on the bus. A district that has knowledge of a reasonably foreseeable risk of harm could find itself paying for any injuries inflicted by a violent student with a disability.

Procedural/ Reimbursement Issues

J.D. v. New York City Department of Education
69 IDELR 87 (2nd Cir. 2017)

If a district disagrees with the type or amount of services recommended by a private evaluator, it should be prepared to present objective evidence showing that the recommended services are unnecessary. A district that offers conclusory statements about the adequacy of a proposed IEP is taking a significant gamble.

L.K. v. New York City Department of Education
69 IDELR 90 (2nd Cir. 2017)

In evaluating the equities of an IDEA reimbursement claim, a court or IHO may consider whether the private services the parents obtained were necessary. A court may reduce a reimbursement award to account for any identifiable and segregable services that go above and beyond a district's FAPE obligations.

School District of Philadelphia v. Kirsch
69 IDELR 28 (E.D. Pa. - Dec. 6, 2016)

Because a student's stay-put rights do not depend on the final outcome of an IDEA action, a district cannot use its pending appeal of an unfavorable ruling as grounds for delaying reimbursement. This rule applies even if the underlying dispute takes several school years to resolve.

Tamalpais Union High School District v. D.W.
68 IDELR 223 (N.D. Cal. - Oct. 4, 2016)

When a reimbursement order is unrelated to the IDEA's stay-put provision, a district may be able to convince a court to delay enforcement of that order while its appeal is pending. A court is more likely to grant such relief if the district highlights questionable legal conclusions in the underlying due process decision.

M.G. v. District of Columbia
117 LRP 11984 (D.D.C. – March 31, 2017)

Districts facing reimbursement requests aren't always obligated to pay the tuition of a student's unilateral private placement. Unless the private school is able to provide FAPE, the district won't be financially responsible even if it failed to locate an appropriate public placement for the student.

C.M. v. New York City Department of Education
69 IDELR 117 (S.D.N.Y. - Feb. 14, 2017)

Courts tend to overlook gaps or defects in a student's annual goals if the corresponding short-term objectives supply the missing information. Still, districts hoping to avoid IDEA complaints should strive to develop IEP goals that are appropriate and measurable in their own right.

P.C. and K.C. v. Rye City School District
69 IDELR 122 (S.D.N.Y. - Feb. 7, 2017)

Districts must take steps to ensure that all goals and services agreed upon at an IEP meeting, make their way into the final document. Unintentional omissions can give rise to allegations that the district excluded the parents from the IEP process.

W.A. and M.S. v. Hendrick Hudson Central School District

69 IDELR 4 (S.D.N.Y. - Nov. 23, 2016)

Most rulings that address AT focus on a district's obligation to provide a particular service or device. This ruling indicates that the availability of AT may be relevant when determining whether a unilateral private placement is appropriate for reimbursement purposes.

G.S. v. New York City Department of Education
68 IDELR 154 (S.D.N.Y. - Sept. 19, 2016)

Evidence that a student with a disability has benefited from a particular related service in the past does not require a district to continue that service. As with other elements of the student's IEP, the main concern is whether the services provided will meet the student's unique disability-related needs.

A.W. v. Board of Education of the Wallkill Central School District

68 IDELR 164 (N.D.N.Y. - Sept. 12, 2016)

Courts tend to be more flexible when determining the appropriateness of a unilateral private placement for reimbursement purposes. Because a district cannot control how a court will view a particular program, it should focus on the one factor it can control: the student's IEP.

L.C. v. New York City Department of Education
68 IDELR 168 (S.D.N.Y. - Sept. 6, 2016)

Disputes over the appropriateness of educational placements are becoming increasingly common in New York. While a district will not be able to avoid every placement challenge, it can minimize the likelihood of litigation by responding to parents' concerns about a particular school's ability to provide certain IEP services.

Private School Issues

A.C. v. Scranton School District
117 LRP 11402 (M.D. Pa. - March 29, 2017)

Districts should check their legal relationships with the private schools they contract with to provide special education and related services to students with disabilities. The legal doctrine of indemnity applies to agreements between districts and private schools where one party in the relationship will be responsible for the other's mistakes.

A.V. v. Lemon Grove School District
69 IDELR 155 (S.D. Cal. - Feb. 23, 2017)

IEP teams may engage in predetermination if they don't maintain an open mind about which school is appropriate for a child with a disability who requires a private placement. To avoid predetermination claims, district team members should engage parents in genuine discussion about the parents' preferred school and consider whether the school is appropriate.

Z.H. v. New York City Department of Education
65 IDELR 235 (S.D.N.Y. - May 28, 2015)

New York law prohibits a district from placing a student with a disability in an unapproved private school unless it is unable to locate any approved program that can meet the student's needs. Districts in the Empire State should thus question any administrative orders that require them to include unapproved private schools in their placement searches.

M.N. v. Katonah-Lewisboro School District
68 IDELR 158 (S.D.N.Y. - Sept. 14, 2016)

Districts must have a clear understanding of their obligations with regard to parentally placed private school students. While the IDEA makes clear that such students are not entitled to FAPE, it also requires a district to evaluate any resident student suspected of having a disability and needing special education as a result.

Letter to Ellen Chambers
69 IDELR 107 (Dec. 27, 2016)

If a district offers a particular equitable service to a parentally placed private school student at a location other than the private school and the student needs transportation to benefit from that service, the district is responsible for getting the student there, no matter how distant the site.

R.M.M. v. Minneapolis Public Schools
67 IDELR 65 (D. Minn. - Feb. 8, 2016)

Districts would be well advised to review any state law requirements governing the provision of services to parentally placed private school students with disabilities. Although the IDEA only requires districts to provide equitable services, state law may expand these students' special education rights.

Letter to Inzelbuch
67 IDELR 125 (Nov. 23, 2015)

The IDEA requires districts to consult with private school representatives before making any decision about how to expend their proportionate share of Part B funds for students who have been placed in private school by their parents.

LRE Issues

C.D. and T.B. v. New York City Department of Education

68 IDELR 15 (E.D.N.Y. - June 16, 2016)

While districts must always consider LRE in making placement decisions, it's important to remember that a general education setting may be inappropriate for students who have trouble with transitions or chaotic environments. For example, this district proposed to place a seventh-grader in a community school with more than 400 students based on the mistaken belief that he needed to socialize with typically developing peers.

Smith v. Los Angeles Unified School District
67 IDELR 226 (9th Cir. 2016)

The 9th U.S. Circuit Court of Appeals reversed and remanded a decision reported at 62 IDELR 197, which denied parents' attempt to intervene in an IDEA case to challenge a new district policy. The 9th Circuit explained that the parents should be allowed the chance to challenge the policy, which resulted from a settlement agreement with other parents.

C.R. and A.R. v. New York City Department of Education

68 IDELR 225 (S.D.N.Y. - Sept. 30, 2016)

District staff should choose their words carefully when explaining why the IEP team rejected a particular placement on the LRE continuum. Whether such statements are made during the meeting itself or at a due process hearing, a poor choice of words can give the impression that the team considered inappropriate factors.

J.K. and J.C. v. Missoula County Public Schools
68 IDELR 68 (D. Mont. - July 29, 2016)

The possible placements suggested in this case included the school that the student previously attended, an alternative high school, and homebound services with a gradual transition to school-based instruction. Those offers showed that the district attempted to work with the parents to ensure the student received FAPE.

S.M. v. Gwinnett County School District
67 IDELR 137 (11th Cir. 2016)

Some parents may object to pullout instruction based on their misunderstanding of their child's needs or concerns about the "stigma" of receiving special education. A district's best bet in such instances is to document the supplementary aids and supports that the IEP team considered and ensure that the child receives instruction with nondisabled peers when appropriate.

H.L. v. Downington Area School District
65 IDELR 223 (3rd Cir. 2015)

A lack of documentation alone will not prove that an IEP team failed to consider a continuum of educational placements. That said, the district should be prepared to submit some evidence showing how the team arrived at its placement decision.

D.F. and V.S. v. City School District of the City of New York

67 IDELR 177 (S.D.N.Y. - March 31, 2016)

The IDEA's strong preference for mainstreaming urges districts to consider not only whether a child with a disability can be educated in the regular classroom with appropriate aids and services, but whether a proposed placement maximizes interaction with peers.

Discipline Issues

C.C. v. Hurst-Euless-Bedford Independent School District

67 IDELR 254 (5th Cir. 2016)

School personnel may change the placement of a child with a disability who violates a code of student conduct provided the child's behavior is determined not to be a manifestation of his disability. As long as discipline is meted out in a nondiscriminatory manner, the district is IDEA compliant.

Letter to Snyder
67 IDELR 96 (Dec. 13, 2015)

When a parent files a due process complaint to challenge an MDR or a district requests a due process hearing to remove a child from his current placement because of the substantial likelihood of injury, the hearing must occur on an expedited basis.

Hudson-Harris v. Board of School Commissioners of The City of Indianapolis

69 IDELR 161 (S.D. Ind. - Feb. 15, 2017)

While the IDEA requires parents to exhaust legal remedies before taking their claims to court, districts should not count on claims going away quickly. They should be prepared to carry out all their defenses.

Behavior Issues

Garris v. District of Columbia
68 IDELR 194 (D.D.C. - Sept. 28, 2016)

When a district develops a BIP to address a student's truancy, it should consider the impact of any significant incidents that occurred after its completion of the functional behavioral assessment. Intervening stressors such as bullying or threats can result in questions about the adequacy of the district's behavioral interventions.

J.C. v. New York City Department of Education
67 IDELR 109 (2nd Cir. 2016)

Although the failure to conduct an FBA for a student whose behaviors impede his learning may constitute a procedural violation under New York state law, such a violation may not always result in a denial of FAPE. When this student presented interfering behaviors such as “jumping hard” and “squealing,” his teachers utilized the positive interventions outlined in the IEP.

R.K. v. Board of Education of Scott County, Kentucky

67 IDELR 29 (6th Cir. 2016)

Parents seeking money damages under Section 504 or Title II must be able to prove some form of intentional discrimination. Such intent may be difficult to establish when a dispute involves the specific method for delivering services as opposed to the district's failure to recognize the student's needs.

Evaluation Cases

B.G. v. City of Chicago School District 299
69 IDELR 177 (ND Ill. - March 20, 2017)

Just because a student speaks a language other than English in the home doesn't mean that a district must conduct all evaluations in that language. In such situations, the evaluators must determine which language is most likely to yield accurate information.

F.C. v. Montgomery County Public Schools
68 IDELR 6 (D. Md. - June 27, 2016)

The right to an IEE at public expense becomes available when a parent disagrees with a district evaluation. However, neither a review of existing data nor a determination that new data is unnecessary constitutes an evaluation for this purpose.

James v. District of Columbia
68 IDELR 11 (D.D.C. - June 21, 2016)

Because evaluative data provides the foundation for a student's IEP, a district should not cut corners when assessing a student's needs. The decision to rely exclusively on existing data during the reevaluation process may very well result in a FAPE complaint that proves to be more costly that any new assessments.

Haddon Township School District v. New Jersey Department of Education

67 IDELR 44 (N.J. Super. Ct. App. Div. - Feb. 4, 2016)

An "evaluation" under the IDEA includes not only assessments, but reviews of existing data and determinations as to which assessments are necessary. A parent who disagrees with decisions about any of these evaluation components may seek a publicly funded IEE.

Avila v. Spokane School District 81
117 LRP 12102 (9th Cir. 2017)

The label assigned to a particular assessment is far less important than the skill areas it evaluates. So long as the district appropriately assesses the student in all areas of suspected disability, it should have little to fear from an IEE request.

Genn v. New Haven Board of Education
69 IDELR 35 (D. Conn. - Nov. 30, 2016)

A parent does not need to use a specific word or phrase to express her disagreement with a district evaluation. If the parents' questions or comments indicate that she objects to the district evaluator's conclusions, the district may want to err on the side of caution and grant her request for a publicly funded IEE.

Perrin v. Warrior Run School District
66 IDELR 254 (M.D. Pa. - Nov. 4, 2015)

There may be instances in which a district has to deviate from its standard evaluation procedures. While such deviations will not necessarily invalidate the assessments (or subsequent eligibility determination), the district should be prepared to explain them and demonstrate the overall validity of the evaluation process.

THANK YOU

Christopher P. Borreca, Partner
Thompson & Horton, LLP - Houston
cborreca@thompsonhorton.com
(713) 554-6740