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Please note that citations contained within Key Quotes have sometimes been omitted to enhance readability.

This handout summarizes reported decisions from 2017 and 2018. We have not attempted to summarize every case, but rather, those that are particularly important and/or instructive. The handout also includes italicized "*Comments"* designed to focus on the practical implications of some of the cases. The Comments sometimes include personal opinions of the author of the handout.

ADA/SECTION 504

A.H. v. Illinois High School Association, 71 IDELR 121 (7th Cir. 2018); 881 F.3d 587

The court held that the state association was not required to lower the standards for participating in state track championships; nor was it required to create a separate category for para-ambulatory athletes. Neither of these would be a "reasonable" accommodation as they would fundamentally alter the nature of the event.

B.A. v. Manchester School District, 70 IDELR NDLR 132 (D.N.H. 2017)

The court denied the school's Motion for Summary Judgment on the ADA/504 claim, noting that there was sufficient evidence of the teacher's discriminatory intent to allow the claim to proceed. Key Quote:

> Varney's motives in force feeding J.F. are unclear. When asked about her actions to force J.F. to eat during her deposition, Varney invoked the protection of the Fifth Amendment, which could lead to an inference that her intentions were not appropriate. In addition, Varney also continued to force J.F. to eat even after the feeding tube was implanted. When the school nurse told Varney that J.F. did not have to be fed, Varney responded that J.F. was being defiant.

Comment: as the court mentioned in a footnote, it is proper to make an adverse inference from a party's invocation of the 5th Amendment in a civil case.

Fortin v. Hollis School District, 70 IDELR 196 (D.C.N.H. 2017)

The court holds that the district may be liable for the deliberate discriminatory actions of a paraprofessional, even though the district had no knowledge of it. The court noted that every Circuit Court that has considered the issue has held that districts can have vicarious liability for disability discrimination by its employees, even without knowledge of it. The court cites cases from the 4th, 5th, 7th, 9th and 11th Circuits. The 5th Circuit case is *Delano-Pyle v. Victoria County*, 302 F.2d 567 (5th Cir. 2002).

Comment: Videotape showed the paraprofessional pulling on the student's ear and there was some evidence that this was not an isolated incident. In fact, the para informed the director that "she thought school district policy permitted ear grabbing and hair pulling as methods of keeping [the student] seated during lessons."

Leddy v. Northern Valley Regional High School District, 70 IDELR 201 (D.C.N.J. 2017)

Parents sought injunction to force the district to retroactively change GPAs and transcripts based on allegations that district discriminated against students with disabilities in access to AP and honors courses. To get into such courses without teacher recommendation a parent was required to sign a "waiver":

> The student understands the requirements and demands of the honors/advanced placement course and is willing to enroll in the course without the recommendation of the faculty and that department. The student further understands that no accommodations or curricular adjustments will be allowed per academic year.

The court denied the injunction. Parents were unlikely to succeed on the merits.

Comment: the court did not interpret the waiver as the parents did. The parent thought the waiver meant that no accommodations of any kind for any student would be permitted. The court interpreted it to mean simply that academic rigor would not be compromised. Key Quotes:

> *If the student does not do well, the waiver form warns, NVRHS will not respond by softening the academic rigor of the course.*
>
> *[The district] intended to inform parents that the "demands" or "requirements" of AP or Honors courses would not be changed or adjusted just because a student struggled in an intentionally difficult class.*

J.S. III v. Houston County Board of Education, 70 IDELR 219; 877 F.3d 979 (11th Cir. 2017)

The court held that the suit alleged a violation of ADA/504 that could be brought separately after IDEA claims had been settled. The allegation was that the student was "with some frequency, excluded and isolated from his classroom and peers on the basis of his disability." The teacher's aide had been taking the student out of his classroom to the weight room. This was not authorized by the IEP. There were also allegations of verbal and physical abuse of the student in the weight room, but that did not figure in this part of the decision.

Comment: Interesting footnote—the parents attached a recording device to the student's wheelchair to obtain evidence of the abuse. This decision does not address the legal issues surrounding that issue.

ATTORNEYS' FEES

S.H. v. Mt. Diablo USD, 71 IDELR 126 (N.D. Cal. 2018)

The court held that the parent was justified in rejecting the school's settlement offer because the amount of attorneys' fees offered ($10,000) was too low. Key Quote:

> MDUSD does not dispute that it made no effort to learn the amount of attorneys' fees counsel had incurred as of the date of the offer. Nor is there any evidence in the record suggesting that MDUSD came up with the figure in the offer based on its expectation of what Plaintiff's counsel was likely to receive if Plaintiff prevailed.
>
> Given the IDEA's goal of encouraging counsel to represent plaintiffs in meritorious challenges to school districts' policies and practices, the Court concludes that Plaintiff was substantially justified in rejecting MDUSD's settlement offer.

BEHAVIOR

Paris School District v. A.H., 69 IDELR 243 (W.D. Ark. 2017)

The court held that the behavior plan for the student was substantively inadequate. The court held that the school lumped all of the student's behaviors into the category of "noncompliance" "completely ignoring the nuances of behaviors that manifest with autism." The parent had provided considerable evaluation material about the student's behaviors when the child was first enrolled in the school. None of that found its way into the BIP. The court also found fault with the fact that the student was assigned to an Alternative Learning Environment with no exit plan for return to the regular school:

> Sending a fifth grader to an ALE program like this one could possibly be "sitting idly…. awaiting the time when they were old enough to drop out." *Endrew F. v. Douglas County*.

C.M. v. Warren ISD, 69 IDELR 282 (E.D. Tex. 2017)

The court upheld the placement of the student in a restrictive environment due to behavioral issues. There were five physical restraints of the student before Christmas. The first of these was prompted by the student throwing chairs and other objects, and then "repeatedly banging his head on the door and wall." When the teacher intervened, the boy "began hitting, kicking and biting her." It continued that way throughout the school year. The parent requested a special education due process hearing in March, 2016. Hearing Officer Mary Carolyn Carmichael conducted a two-day hearing in May, 2016 and rendered a lengthy decision in favor of the school district. The parent appealed the decision into federal court, which also ruled in favor of the school district.

The district pointed out that the student often refused to participate in the general setting: "When he was not refusing to participate…his behavior and aggressive outbursts …. impeded his own learning and the learning of his peers in the general education classrooms."

CHILD FIND

Krawietz v. Galveston ISD, 72 IDELR 205 (5th Cir. 2018)

The court held that the district failed to evaluate and identify the student in a timely fashion. The student was in the district's special education program until 2008 when the family took her out of public school. She returned to GISD four years later, never having been dismissed from special education. But GISD did not find the student's records. The district served her under 504, but did not offer to do a FIIE until after the due process hearing was requested.

Lauren C. v. Lewisville ISD, 70 IDELR 63 (E.D. Tex. 2017)

The court held that the district fulfilled its Child Find responsibility by evaluating the student in a timely fashion. The fact that the district refused to identify the student as having autism was not a Child Find violation:

> That the LISD did not diagnose Plaintiff with autism disorder after multiple evaluations testing for autism does not mean that LISD failed to comply with its Child Find procedural obligations. On the contrary, the multiple evaluations demonstrate that the LISD complied with these obligations.

The court noted that IDEA does not require the students be classified by a specific disability label:

> A specific classification or label is not required as part of the Child Find obligations or as part of the IDEA itself.

Comment: The parents acknowledged that they were happy with the IEP and services, but wanted the autism label "in order to ensure optimal services from [the DARS], [Supplemental Security Income], and other agencies in the future." The parents appealed to the 5th Circuit, claiming they should recover attorneys' fees as "prevailing party" since the hearing officer had ordered the district to identify the student as having autism. The court denied the request for fees, noting that the change in label did not change the services the student received. Thus the parents had only obtained a "de minimis" or "technical" victory that was not sufficient to award fees. The decision is at 72 IDELR 362 (5th Cir. 2018).

Shane T. v. Carbondale Area School District, 70 IDELR 259 (M.D. Pa. 2017)

The court held that the district violated the child find provision by failing to offer FAPE when the mother sought enrollment in the district. The district believed that the mother intended to keep the student in the private school he was attending, but the court held that this was erroneous. Key Quotes:

> The case law is clear that enrollment of the student or a parent's request for evaluation would normally trigger the District's obligation to provide a FAPE.
>
> …it is not the parent's obligation to clearly request an IEP or FAPE; instead, is the school's obligation to offer a FAPE unless the parent makes clear his or her intent to keep the student enrolled in the private school.

DISCIPLINE

A.V. v. Panama-Buena Vista Union School District, 71 IDELR 107 (E.D. Cal. 2018)

The parent argued that the student was entitled to IDEA procedural protections prior to his expulsion from school because the district "had knowledge" that he had a disability. The parent had requested an evaluation on September 15, and the events leading to expulsion occurred after that. This would normally put the student into the category of students who are entitled to IDEA protections due to the district's knowledge of the request. However, on September 22nd, just one week after the request, the district agreed to do the evaluation and provided the parent with a consent form to sign. She never signed it. It was provided in both English and Spanish and the court held that the district went "the extra mile" in an effort to get it signed. Mother never signed it. This removed the student from the "you should have known" category. Key Quote:

> Once the District requested Consent from Ms. Varela, it no longer had a basis of knowledge that A.V. was a child with a disability until his mother provided her Consent for Assessment.

ELIGIBILITY

D.L. v. Clear Creek ISD, 70 IDELR 32 (5th Cir. 2017)

The court affirmed the ruling that the student was not eligible for services due to a lack of educational need. This was supported by an evaluation, teacher observations and student performance. The district considered an IEE report that the student had disabilities, but determined that there was no need for special education. Parent claimed that the district relied exclusively on the student's academic performance, but the record refuted that. Parent also claimed that the student's problems could not be detected by "the untrained eye" of a teacher. Court rejected that. Court also noted that an IEE not presumptively better than the school's evaluation, and in fact, the most valuable input comes from teachers:

> Finally, we have recognized that teacher observations—like those on which the District relied stating that D.L.'s disability was not affecting academics or behavior—are especially instructive as they spend more time with students than do outside evaluators.

The court also rejected fears of future problems as a valid basis for eligibility:

> A fear that a student may experience problems in the future is not by itself a valid basis for IDEA eligibility.

S.P. v. East Whittier City School District, 72 IDELR 88 (9th Cir. 2018, unpublished)

The court held that the district denied FAPE to the student by failing to identify the student as having a hearing impairment. The district concluded that the student did not qualify as deaf, but the court pointed out that "deaf" and "hearing impaired" are two separate classifications. The district erred by using the definition of "deaf" to determine that the student did not have a "hearing impairment." The district then argued that this was merely a procedural error and it still provided FAPE. The court rejected that argument because of the specific provision in IDEA about IEP content when the student is identified as deaf or hearing impaired:

> In the case of a child who is deaf or hard of hearing, the IEP must consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs."

Letter to Zirkel, 72 IDELR 131 (OSEP 2018)

In this letter, OSEP tells us that states can use the "severe discrepancy" model to determine eligibility of students with a learning disability. If they use that model, the letter says that they do not have to also employ RTI techniques to satisfy 34 CFR 300.309(b)(2). However, they do still have to satisfy 34 CFR 300.309(b)(2). That is the portion of the regulation that requires the team to consider:

> Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

Consideration of this data is necessary "to ensure that underachievement in a child suspected of having a specific learning disability is not to lack of appropriate instruction in reading or math."

Comment: Translation: you can still use the severe discrepancy model if that's OK with your state. And if you do, you don't have to use RTI methods …. but you have to gather data in a way that looks an awful lot like RTI.

Letter to State Directors of Special Education, (OSEP 2017)

This is about eligibility as visually impaired. The letter provides guidance on how evaluations should be conducted and emphasizes that "any impairment in vision, regardless of significance or severity, must be included in a State's definition, provided that such impairment, even with correction, adversely affects a child's educational performance."

EVALUATIONS

B.G. v. City of Chicago School District, 69 IDELR 177 (N.D. Ill. 2017)

The court affirmed a ruling in favor of the school district and the appropriateness of its many evaluations. In part this was based on the weakness of the testimony from the parent's experts:

> Dr. Goldstein never met B.G., did not evaluate him, and did not interview any of B.G.'s teachers or other school staff. Dr. Bailey similarly did not evaluate B.G., did not conduct classroom observations, and did not conduct any interviews with school staff. The IHO took this into consideration in determining how much weight to give the expert testimony, and Plaintiffs do not cite to any legal support that this was inappropriate.

Comment: It's proper for hearing officers to take these factors into account. And it's proper for the IEP Team to do so as well. The 7th Circuit affirmed the decision (72 IDELR 231, 2018), largely based on judicial deference to the hearing officer:

> This case involves a voluminous administrative record dealing with subject matter beyond the expertise of federal judges. That is why we defer to the hearing officer's factual findings and decline to substitute our own views on educational policy for the hearing officer's.

R.A. v. West Contra Costa USD, 70 IDELR 88 (9th Cir. 2017)

"There is no legal requirement for the District to let R.A.'s mother see and hear R.A. during the behavioral and psychoeducational assessment, the condition R.A.'s mother insisted was necessary." Due to the impasse over this issue, the court held that the district's failure to complete the assessments did not deny FAPE to the student. The court also rejected the claim that the placement was predetermined.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

J.L. v. Wyoming Valley W. School District, 71 IDELR 142 (3rd Cir. 2018, unpublished)

The suit alleged that the student was injured while receiving special education transportation services due to the actions of a van driver. The court held that the gravamen of the complaint was about the denial of FAPE under IDEA, and therefore, exhaustion was required. The fact that the plaintiff sought money damages for physical injuries did not change that. Case dismissed.

S.D. v. Haddon Heights Board of Education, 71 IDELR 136 (3rd Cir. 2018, unpublished)

The court dismissed the suit for failure to exhaust administrative remedies under IDEA. The student was served under a 504 plan and the suit made no mention of IDEA. However, the gravamen of the complaint, according to the court, was the denial of appropriate educational services. Plaintiff argued that he would not have been eligible under IDEA, but the court noted that asthma counts as an "other health impairment" and that it appeared from the record to adversely affect his educational progress.

A.P. IV v. Lewis Palmer School District No. 38, 72 IDELR 2 (10th Cir. 2018, unpublished)

The case was dismissed for failure to exhaust IDEA administrative remedies. The student was identified under 504 but sought relief for educational injuries that could have been addressed via IDEA. The court also held that filing an OCR complaint did not satisfy the exhaustion requirement. On appeal, the student raised arguments that had not been raised below, and the court held that they were waived.

Prunty v. Desoto County School Board, 72 IDELR 116 (11th Cir. 2018, unpublished)

This is another case that applies *Napoleon v. Fry* re: exhaustion of administrative remedies. The court dismissed the case because the gravamen of the complaint concerned a denial of FAPE, and the plaintiff had not exhausted administrative remedies.

FAPE

S.G.W. v. Eugene School District, 69 IDELR 181 (D.C. Ore. 2017)

In a case about the district's alleged failure to implement the IEP, the district argued that the student's "undisputed academic progress renders any IEP implementation failure immaterial." The court disagreed, and concluded that significant elements of the IEP were not implemented.

T.M. v. Quakertown Community School District, 69 IDELR 276 (E.D. Pa. 2017)

The court upheld an administrative decision in favor of the district, in a case involving a student with autism whose parents sought more extensive data collection and a "strict ABA" program with 20 hours of direct one-to-one service. The court held that the school staff was more credible than the parent's BCBA. This was based on a comparison of credentials and time spent with the student. As to credentials, the school staff held multiple masters and doctoral degrees. The BCBA did not have a college degree. The school staff spent 1,440 hours with the student over a two year period; the BCBA spent 16 hours on two days. The testimony of the BCBA as to academic, behavioral and speech goals was discounted because she "does not possess the requisite educational background to opine on those topics."

Comment: This case is an excellent example of how to deal with an outside report. The district reviewed the recommendations, adopted some and had a good explanation for rejecting others. The district comes across as very professional.

E.G. v. Great Valley School District, 70 IDELR 3 (E.D. Pa. 2017)

The court affirmed the IHO decision that the student received FAPE. The court applied the *Endrew F.* standards and found the IEPs appropriate even though not set at grade level. The student had severe learning disabilities and made appropriate progress in light of his circumstances.

Keith and Linda G. v. Waller ISD, 70 IDELR 61 (5th Cir. 2017), unpublished

This is the first 5th Circuit decision applying the FAPE standard as articulated by *Endrew F.* The court held that the district court applied the correct standard in its ruling in favor of the district. The district court "explicitly stated that the educational benefit…cannot be a mere modicum or de minimis; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement." The court then applied the four *Michael F.* factors and concluded that the district provided FAPE.

Hack v. Deer Valley USD, 70 IDELR 130 (D. Ariz. 2017)

The district denied FAPE to the student by refusing to develop an IEP until the student enrolled in the district.

Comment: this is now well established and should be well understood. The IEP services cannot be delivered until the child enrolls, but the IEP can—and must—be developed and offered.

Board of Education of Albuquerque Public Schools v. Mondragon, 70 IDELR 157 (D.C.N.M. 2017)

The hearing officer held that APS denied FAPE to the student, but the court reversed. The student was 13-years old, and had autism along with global developmental delays. He was non-verbal and not toilet trained. Much of the dispute was over the parents' contention that only a strict ABA program would be appropriate. The court rejected that, noting that methodology decisions are to be made by the educators. The court's opinion makes repeated reference to the standards of *Endrew F.* and this student's unique needs. Key Quotes:

> Even if APS did not utilize ABA techniques, the choice of educational methodology is reserved for the school district. [Note: the court found that the district DID incorporate ABA techniques].
>
> Labels do not drive the IEP, student need does so.
>
> The progress M.M. made under the in-home BCBA is not the appropriate measure of whether the services M.M. was receiving from APS were inappropriate.
>
> M.M. is not like other students with autism who can sit and complete a task without an adult sitting alongside him, therefore his unique challenges made it more difficult for him to learn to communicate.
>
> Moreover, underlying this entire dispute is a reality that the Court cannot ignore: Parents withdrew M.M. from school in the middle of the school year, well before anyone could evaluate if M.M. met his IEP goals given the full year's opportunity in the ISP classroom.

Comment: Any lawyer handling a case involving a student with autism would be wise to read this decision. It presents many of the issues and arguments that are very typical in those cases, and applies the Endrew F. standards.

K.D. v. Downingtown Area School District, 72 IDELR 161 (3rd Cir. 2018

The court affirmed decisions by the hearing officer and the district court that the student received FAPE and thus parents were not entitled to tuition reimbursement. The court held that *Endrew F.* did not change the standard for FAPE in the 3rd Circuit. Key Quotes:

> IEPs must be reasonable, not ideal. Though her parents argue otherwise, K.D.'s slow progress does not prove that her IEPs were deficient.
>
> While courts can expect fully integrated students to advance with their grades, they cannot necessarily expect the same of less-integrated students…..[K.D.] received supplemental learning support for much of the day. So there is no reason to presume that she should advance at the same pace as her grade-level peers.

The parents relied on a guidance letter issued by OSERS in 2015, which stated that "Research has demonstrated that children with disabilities who struggle in reading and mathematics can successfully learn grade level content and make significant academic progress when appropriate instruction, services, and supports are provided." The letter added that "the annual goals…should be sufficiently ambitious to help close the gap" between the child's current and grade level achievements. The court noted that the letter was not legally binding, or even persuasive:

> And this guidance letter does not address the IDEA's language, let alone parse it.

The parents were "overreading" the letter, said the court, noting that the "close the gap" language was an aspirational goal, not a realistic target or a legal requirement.

The opinion of the district court also included some helpful discussion about the impact of *Endrew F*. Key Quote:

> The focus on a child's "progress" has led to confusion in our precedent. As clarified recently by the Supreme Court, and earlier by the Third Circuit, the confusion boils down to a distinction between two types of students: (1) a child who is progressing smoothly, grade-to-grade, through school; and (2) a child with a learning disability or cognitive limitation who is not progressing grade-to-grade through school. With the former student, it makes sense to view academic progress, grades, and test scores as evidence that an IEP is reasonably calculated to confer a meaningful educational benefit. But that is specifically because, with a child not afflicted with a learning disability, that is what should be expected. With the latter student, however, our precedent has warned against engaging in a retrospective analysis of academic achievement in determining the appropriateness of an IEP. This is specifically because, unfortunately, it cannot always be reasonably expected that progress will occur in such a lock-step manner when a child is suffering from a learning disability.

In this case, the court noted that the child's progress "was slow compared to her peers" and "Sometimes she would take a few steps forward, and then one step back. In light of K.D.'s severe learning disability in the areas of comprehension, reading, and writing, this kind of fragmented progress could reasonably be expected." 70 IDELR 203 (E.D. Pa. 2017)

E.F. v. Newport Mesa USD, 71 IDELR 161 (9th Cir. 2018, unpublished)

The 9th Circuit had previously ruled in this case that the district provided FAPE. Then SCOTUS decided the *Endrew F.* case and sent this case back to the 9th Circuit for reconsideration. Here, the court holds that *Endrew* clarified, but did not change, the FAPE standard that had been used in the 9th Circuit. Therefore, the decision in favor of the district was affirmed.

IEEs

A.A. v. Goleta Union School District, 69 IDELR 156 (C.D. Cal. 2017)

The court upheld the decision of the district not to pay for the IEE which exceeded the district's cost criteria. The court found that the cost criteria were reasonable, and the parent failed to produce evidence of unique circumstances that would warrant a higher fee.

Comment: The district based its criteria on its survey of evaluators in the area, rejecting the highest and lowest. The court discussed two OSEP letters that address whether or not a district, in a case like this, must pay an amount up to its cap. However, the court held that the issue was not properly before it. The letters are Letter to Thorne (16 IDELR 606, 1990) and Letter to Petska, (35 IDELR 191, 2001).

Shane T. v. Carbondale Area School District, 70 IDELR 259 (M.D. Pa. 2017)

The court held that the parent was not entitled to an IEE because the district had not conducted an evaluation of its own.

IEPs

S.G.W. v. Eugene School District, 69 IDELR 181 (D.C. Ore. 2017)

This is one of the rare cases that discusses progress reports. The court held that the frequency and timing of reports to the parent was adequate, but the content was not:

> The ALJ erred to the extent she found that the grade reports' frequency and timing rendered them inadequate. The IDEA does not specify how often progress reports must be provided …. But I agree with the ALJ that the grade reports' contents failed to accomplish the goals of progress reports under the IEP, which were to inform parents of student's progress on IEP goals specifically, not of student's academic progress generally.

Comment: The court characterizes this error as a substantive, rather than procedural error. Therefore, parent did not have to prove that the error caused harm. The "progress reports" sound like report cards—letter grades about overall academic progress in each class.

S.H. v. Mount Diablo USD, 70 IDELR 98 (N.D. Cal. 2017)

The court held that the IEP was not specific enough, thus depriving the parent of a meaningful opportunity to participate. The IEP called for 40 minutes/week of "Speech and Language." It did not specify whether this would be individual or in a group. This was important, because the IEP was based on an IEE that recommended both individual and group services.

Board of Education of Albuquerque Public Schools v. Mondragon, 70 IDELR 157 (D.C.N.M. 2017)

The IEP called for a reduction in speech/language therapy from 720 minutes per semester to 600. The hearing officer cited this as one reason the IEP failed to provide FAPE, but the court overturned that decision. The court noted that the school offered a "cogent and responsive" explanation for the decrease. That phrase comes from *Endrew F.* The reason for the decrease was that the IEP called for the classroom teacher to be more involved in speech/language development, rather than relying exclusively on the speech therapist.

S.B. v. NYC DOE, 70 IDELR 221 (E.D.N.Y. 2017)

The court held that the IEP was flawed by aiming too high, thereby failing to individualize based on evaluation data. The evaluation data showed that the student was a non-reader who only recognized "several letters of the alphabet." IEP goals were much higher than that. Key Quotes:

> Nonetheless, there are no goals related to learning the alphabet; instead the goals presume that C.B. is a reader, requiring her to, in part, "identify the main ideas of stories," analyze the emotions and motivations of characters, and improve her vocabulary by using "context clues" within sentences and paragraphs to identify unknown words when reading.
>
> There is no evidence, however, that interpreting and critical thinking skills are goals particularized to C.B.'s individual needs and disability.

All of the educators who had worked directly with the student in a private school testified that she needed to be in a classroom with fewer than 12 students. The district ignored that. The court:

> The private school's class size does not bind the CSE [IEP Team] in formulating the IEP. However, the DOE's failure to consider a smaller classroom size may deny a student a FAPE when all witnesses familiar with the student testify that she required a certain placement, and that testimony is not adequately rebutted by DOE witnesses.

Comment: A fundamental problem for the district in this case was that the private school staff knew the student far better than the public school staff, but the public school failed to recognize that. In fact, the court quoted the private school teacher as noting that the student was "nowhere near being able to do something like that…[referring to analyzing, identifying the main idea and using context clues]…she wasn't reading sentences, so she wasn't ready for that."

IEP TEAM MEETINGS

Pangerl v. Peoria USD, 69 IDELR 133 (D.C. Ariz. 2017)

The court held that the parent was not denied meaningful participation, even though the IEP Team finished writing the IEP after the parent left the meeting. The court carefully distinguished the fact situation here from the facts in *Doug C. v. Hawaii DOE*, a 9th Circuit decision cited by both parties. Here, the Team scheduled the meeting for two hours. The parent was accompanied by two advocates. One of the advocates said from the beginning that she could not stay longer than the two hours. When the two hour mark arrived, the IEP was not complete. The parent and advocates left the meeting and the rest of the team completed the process because the existing IEP was set to expire in a few days. The district representative informed the parents, before she left, that the team would complete the process, but that they would also reconvene to make changes to the IEP. And they did that. The court:

> The present case is somewhat similar to *Doug C.* But unlike the father in *Doug C.*, Plaintiff and her advocates were present at the November 2012 IEP meeting, stayed for the full two hours that the meeting was intended to run and only left when their advocate had to leave. Although Plaintiff suggested rescheduling the balance of the meeting, the District representatives finished the balance of the IEP without the presence of the Parents. As in *Doug C.* the District cited the expiring IEP as a reason why the team needed to complete the balance of the IEP in the absence of Parents. The District stated it would make any required addenda to the IEP and, in fact, did so immediately upon the start of the 2013 IEP year.

Comment: This is an excellent case for training, particularly to point out how well the LEA representative managed this meeting.

J.S. v. NYC DOE, 69 IDELR 153 (S.D.N.Y. 2017)

The court was not bothered by the fact that a draft of the IEP was circulated prior to the IEP Team meeting, noting that the parent received a copy of the draft, and participated in the meeting. Nor was it a problem that the school recommended the same placement for several years in a row. The record showed that other alternatives were also considered.

S.H. v. Tustin USD, 69 IDELR 176 (9th Cir. 2017)

This is a case where the parents allege that the district predetermined placement and denied them meaningful participation in the process. The context was a change of placement proposed by the school after six IEP Team meetings. The court ruled for the district. Key Quote:

> The record clearly shows that Appellants were provided adequate—and arguably extraordinary—opportunities to participate in the placement decision. Appellants visited the proposed placement multiple times, before and after the placement decision. And at least one of the Appellants attended and participated in every IEP meeting, effecting many changes to the plan.

Comment: As seems typical, the "denial of meaningful participation" here was made by parents deeply involved in the process.

B.G. v. City of Chicago School District, 69 IDELR 177 (N.D. Ill. 2017)

The court noted that the parent was present, with counsel, at the IEP Team meeting, did not object to, or express disagreement with any of the evaluation reports presented at the meeting. Parent also did not object when district professional staff spoke to her about their evaluations prior to the meeting. Then this:

> While a parent's failure to object to an IEP does not waive their right to challenge, it "casts significant doubt on their contention that the IEP was legally inappropriate."

Albright v. Mountain Home School District, 70 IDELR 95 (W.D. Ark. 2017)

The court rejected the claim that the parent was denied meaningful participation in the process:

> The District's compilation of over several hundred pages of email and the Parent's multiple pages of transcriptions of various IEP meetings is evidence enough to deny the Parent's claim that she was not provided opportunity to participate in the development of the Student's IEPs.

J.R. v. Smith, 70 IDELR 178 (D.C. Md. 2017)

The court rejected the parent's argument that placement was predetermined. This was largely based on a phone call from a school staff member to the parent prior to the meeting advising them to "be ready for a fight" over placement. The court acknowledged that the principal had an opinion about placement prior to the meeting, but he did not press it on other members of the team. Both placement options were discussed at the meeting and the parties had a "robust discussion." The majority of the team favored the principal's view. The court held that this was a far cry from cases where districts had a closed mind.

Comment: This is a good case for illustrating the distinction between PREPARATION and PREDETERMINATION. As the court pointed out, the school is expected to come to the meeting with an open mind—not a blank mind.

Letter to Zirkel, 72 IDELR 46 (OSEP 2018)

OSEP says that IDEA does not give guidance on whether or not the opinions of a dissenting member of the IEP Team should be included in the student's record. However, in the context of the evaluation of a student for a specific learning disability there is a provision calling for members of the team who disagree to submit a written statement. As to other situations, IDEA does not speak to it, so it is up to state and/or local policy.

LEAST RESTRICTIVE ENVIRONMENT

Dear Colleague Letter: Preschool LRE, 69 IDELR 106 (OSEP 2017)

This DCL is a reminder that the LRE provisions apply equally to the preschool children. This is the case even if the LEA does not offer preschool to non-disabled children.

I.L. v. Knox County Board of Education, 70 IDELR 71 (E.D. Tenn. 2017)

The court held that districts can move a student to a more restrictive environment without attempting to use supplementary aids and services. Key Quote:

> Taylor [the parent] reasons that because there is a continuum, schools must start at the least restrictive option and move up one step at a time.
>
> Not so. "The regulations do not require that a child has to fail in the less restrictive options on the continuum before that child can be placed in a setting that is appropriate to his or her needs." 64 Fed. Register 12,406, 12,638 (March 12, 1999).
>
> To be sure, disabled students cannot be removed from regular classes unless "the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." But this does not say that schools must actually try supplementary aids and services before removing children from regular classes. Instead, the IEP team must simply look into whether supplements could be used instead of separate schooling.

Comment: The context is the district's effort to change the student's placement. The student was receiving only 20 minutes of special education services and was otherwise in the mainstream. The school proposed four hours of special education daily. The student was extremely disruptive and frequently violent. The court ruled for the school on this issue.

J.S. v. Clovis USD, 70 IDELR 118 (E.D. Cal. 2017)

The court upheld the change of placement to a more restrictive environment for a student with Down Syndrome based mostly on teacher testimony about the student's inability to understand or participate in grade level activities in the general classroom.

LIABILITY

C.R. and J.R. v. Novi Community School District, 69 IDELR 120 (E.D. Mich. 2017)

This is a student-on-student sexual harassment case involving a student with an emotional disturbance allegedly harassing a smaller autistic student. Both boys in middle school. The court held that a reasonable jury could conclude that the district was deliberately indifferent due to the actions and inactions of the principal and assistant. There were also sufficient allegations to go forward with a retaliation claim. The plaintiff's equal protection claim was dismissed, but the Due Process claim, based on state-created danger, was allowed to proceed. This was largely based on actions of the teacher in isolating the two boys in a small room after she had previously seen inappropriate touching. The principal also faces possible supervisory liability. The "failure to train" claim was allowed to proceed, in part because of the district's failure to respond to a Dear Colleague Letter. 504/ADA claims were dismissed.

Comment: This one makes for an interesting case study of what not to do. The court cited the fact that the school failed to keep a record of past misconduct by students; did not provide training on sexual harassment; deleted evidence (videos); and held the victim as equally at fault as the perpetrator. Of course, all of this is at an early stage, but still, the case would be good for training about the types of actions and omissions that would lead a court to conclude that the district was deliberately indifferent.

McKenzie v. Talladega City BOE, 69 IDELR 149 (N.D. Ala. 2017)

A severely disabled student was injured in the process of an evacuation drill from the bus. The suit alleged violations of substantive due process and equal protection. The court dismissed the suit, noting that the conduct alleged fell far short of "conscience-shocking" behavior.

Saldana v. Angleton ISD, 2017 WL 1498066; 69 IDELR 274 (S.D. Tex. 2017)

A bus monitor in Angleton ISD has been sued for allegedly abusing a student with autism, repeatedly, on the school bus. The pleadings in the case include this:

> That on 37 bus trips over a 22-day period, [the bus monitor] viciously assaulted the minor Plaintiff, with no provocation whatsoever, a verified and documented 39 times, including pinching, slapping, and striking him with a metal belt buckle, his school supplies and even his own tennis shoes.

The suit alleges that the videos on the bus will confirm all this. The bus monitor filed a Motion to Dismiss the case, asserting her qualified immunity. The court denied the Motion, holding that the law on this is "clearly established." Key Quote:

> A reasonable school district employee would have understood that a school bus monitor's repeatedly striking a disabled, nonverbal student, without any provocation of justification, violated the child's substantive due process rights and

that such conduct was objectively unreasonable in light of the clearly established law at the time.

PARENTAL RIGHTS/RESPONSIBILITIES

E.D. v. Colonial School District, 69 IDELR 245 (E.D. Pa. 2017)

The district, on advice of counsel, refused to allow the parent's expert to observe a classroom prior to the due process hearing. The attorney wrote that the purpose of the observation was to develop "an expert report for litigation purposes." The court held that barring the expert did not infringe on parental rights. The court pointed out that the expert wanted to visit a classroom where the student was not enrolled, and in which nobody had any intention of enrolling him. This was not part of an IEE, since the expert sought to evaluate a classroom, not a student. Key Quotes:

> Dr. Cane's visit would not have constituted an IEE. Section 300.502(b)(1) of the Regulations provides for evaluations of a child, not a specific educational program….
>
> Plaintiffs' procedural rights do not extend so far as to require Defendant to cooperate in furnishing new evidence for litigation purposes.

Camfield v. Board of Trustees of Redondo Beach USD, 70 IDELR 126 (C.D. Cal. 2017)

The court held that parental rights of free speech or due process were not violated when the school temporarily restricted parental access to school, based on several instances of inappropriate behavior. The court noted that a public school is not a public forum for 1st Amendment purposes, and the parents had no constitutionally protected right of access to the school:

> The Supreme Court has held that school administrators have the right to immediately remove from school property individuals who pose a threat of an ongoing disruption to the academic process. *Goss v. Lopez*.

PERSONNEL ISSUES

Pistello v. Board of Education of the Canastota Central School District, 69 IDELR 209 (N.D.N.Y. 2017)

This is a discrimination/retaliation case from a teacher. The court held that the teacher engaged in "protected activity" by pointing out in an email to the superintendent that IEPs were not being implemented properly. The teacher suffered an "adverse employment action" when she was transferred and assigned to teach subjects for which she was not certified. There was enough evidence of causation to keep the case alive at the Motion to Dismiss stage.

Comment: this all began when the teacher sent an email to the superintendent, bypassing the director of special education, pointing out that she had three students who were routinely going to a career skills program after just 10 minutes in her classroom, whereas the IEPs called for them to be in the classroom for the entire class. The email observed that "This indicates that we—as a district—are not in compliance. If these students fail—as they all are now failing—their parents could sue the school district."

PLACEMENT

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

There is excellent discussion in this case about the distinction between "placement" and "location" including citations of many cases holding that the IEP does not have to identify a specific school. Key Quotes:

> Educational placement under the IDEA refers to the general educational program in which a student is enrolled rather than the specific school assigned.
>
> The IDEA does not require that the IEP name a specific school location.
>
> Therefore District's unilateral selection of Sierra [the specific school] did not violate IDEA.

Comment: However, there are also cases holding that the IEP must identify a specific school when the ability of the school to implement the IEP is in question. Here, it was not. Parents conceded that Sierra could implement the IEP.

School District of Philadelphia v. Post, 70 IDELR 96 (E.D. Pa. 2017)

The court held that the district illegally changed placement by unilaterally pulling the student out of the general education classroom for 45-90 minutes/day, without notice to or participation by the parents. The court held that this violated the stay put rule, as it occurred during the pendency of a due process hearing; and the right of the parent to meaningful participation. The court further held that this procedural error caused substantive harm and thus was a denial of FAPE.

PRACTICE AND PROCEDURE

G.L. v. Saucon Valley School District, 69 IDELR 249 (E.D. Pa. 2017)

The court upheld an IHO decision that the district provided FAPE, with appropriate behavioral supports for a very troubled student. The most interesting part of the case is that the IHO declared the 11-year old student to be an "unreliable reporter of events at school, often misinterpreting social interaction or making false statements." Based on this, the IHO gave less credibility to the testimony of the parent and the expert, both of whom relied greatly on the student's reports. The finding that the student was "unreliable" was supported by numerous witnesses, including the mother:

> Defendant correctly notes that it is not a matter of contradiction, but agreement that G.L. is not a reliable reporter.

R.M.M. v. Minneapolis Public Schools, 70 IDELR 64 (D.C. Minn. 2017)

The court held that the district withheld information from the parent, and thus could not rely on the statute of limitations to limit the parent's recovery. The district did not provide the parent of the private school student with a copy of the procedural safeguards document until shortly before the parent requested a hearing. Furthermore, the notice document failed to inform the parent of the timeline for making a complaint.

J.S. v. Clovis USD, 70 IDELR 118 (E.D. Cal. 2017)

The court thoroughly demolished the testimony of the parent's expert:

> Ms. McVay had never met or interviewed Student, observed Student in her classes, participated in her IEP assessment or meetings, and had never talked to or interviewed any of her teachers, peers, or IEP team members.

The court concluded that the expert supported inclusion as a general philosophy "rather than any careful consideration of Student's individual capacities and needs." The court noted that the expert's testimony about how the student participated in the classroom was contradicted by the teachers who had personal knowledge. The expert also testified that the teachers had inadequate training, and then acknowledged on cross examination that she "had no idea what level of training or credentials any District personnel had."

K.D. v. Downingtown Area School District, 70 IDELR 203 (E.D. Pa. 2017)

This case provides yet another example of mistakes made in the preparation of the parents' expert witness. The hearing officer discounted the expert's testimony and the court affirmed that decision. The court noted that the expert never spoke to the teachers who served the student in grades 1-3:

> Dr. Kelly was not necessarily required to speak with these school officials. However, in an area of the law that defers to "the exercise of judgment by school authorities," [citing to *Endrew F.*] it would have helped Dr. Kelly's credibility to do so since she claims that K.D.'s reading instructions did not change "for years." In reality, K.D.'s reading instruction changed in many ways …. Had Dr. Kelly consulted with or questioned K.D.'s special education teachers, she would have learned this information.

PRIVATE SCHOOL STUDENTS

R.M.M. v. Minneapolis Public Schools, 70 IDELR 64 (D.C. Minn. 2017)

The court held that the district violated its Child Find responsibilities with regard to a private school student. The court held that the district was too passive, depending almost entirely on referrals from private schools. Moreover, the district was on notice of this particular student's possible need for services because she had been receiving Title I services for a number of years due to poor academic achievement. Key Quotes:

> This duty [Child Find] is the sole responsibility of the school districts—it may not be discharged simply by passing the burden on to private school educators or parents.
>
> Here, the passivity of the School District's child find activities evidenced an abrogation of its responsibilities that the IDEA simply does not permit.
>
> Again, relying on private school officials to refer parents to the School District for an evaluation is not—standing alone-a sufficiently active strategy to meet the IDEA's child find requirements.
>
> The record before this Court shows that beyond holding meetings with private school officials, the School District was content to take a passive role.

Comment: The court held that the district denied FAPE to the student, which is surprising because federal law makes it clear that students in private schools are not entitled to FAPE. However, the 8th Circuit held that Minnesota state law does require FAPE for such children, Special School District No. 1, Minneapolis Public Schools v. R.M.M., 861 F.3d 769 (8th Cir. 2017); 70 IDELR 58. The court also held that parents of students in private schools are entitled—under both state law and IDEA--to a special education due process hearing to challenge the provision of FAPE—if state law guarantees FAPE for such children.

RELATED SERVICES

Paris School District v. A.H., 69 IDELR 243 (W.D. Ark. 2017)

The court held that the district improperly took the PT out of the IEP without first evaluating the student's need. The district claimed that the student had physically attacked the PT, but the record did not support this. There was no evaluation to justify the termination of services and the PT did not attend the IEP Team meeting where the decision was made.

M.G. v. Williamson County Schools, 71 IDELR 102 (6th Cir. 2018, unpublished)

The Circuit Court affirmed a decision in favor of the district. The district complied with child find; kept the parents informed, despite the failure to provide "prior written notice" on three occasions; and its decision not to provide OT and PT was properly supported. Key Quote:

> Although [the parents] challenge [the school's] conclusions by pointing to [the child's] doctor's prescription for occupational and physical therapy, "a physician cannot simply prescribe special education." The IDEA does not require schools to provide physical and

> occupational therapy to all students who might "benefit from or need" those services outside of the educational context; rather, the IDEA only requires schools to provide those services to students who required them in order to receive "the full benefit of special education instruction." We therefore find [the child's] educators' numerous assessments a better indicator of her need for special education services than [the child's] doctor's prescription.

REMEDIES

Riha v. Polk County School District, 70 IDELR 89 (M.D. Fla. 2017)

On two occasions, the student was left sleeping on the bus. On both occasions the student managed to get off the bus and get home, 30 miles away. On both occasions, the driver failed to adequately check the bus. The court dismissed the suit as there was no evidence of a policy or a pervasive pattern of conduct that caused the student's injuries.

Comment: This suit was unsuccessful because it was brought against the school district under federal law which requires proof that a school board policy or widespread custom led to the injury. We can infer from this that Florida law does not permit tort liability for the school district on a simple negligence case. This is a simple negligence case, and if state law permitted recovery for negligence, the case would have been filed in state court. But when state law does not permit recovery for negligent acts by school employees, plaintiffs go to federal court. But it is difficult for them to prevail in that forum.

B.A. v. Manchester School District, 70 IDELR 132 (D.N.H. 2017)

The court held that plaintiff could proceed with a claim of a denial of substantive due process based on a lack of training of the teacher and aides. There was sufficient evidence to permit a jury to conclude that the student's injuries, resulting from the teacher force-feeding him, were caused by the lack of training. Key Quote:

> It is undisputed that neither [the teacher] nor the teacher's aides in her classroom were trained to avoid abusive treatment, in the lawful and appropriate use of physical restraints, or in the requirements for reporting abuse.

Comment: Really? That's hard to believe. The teacher and aides worked in the self-contained classroom. The teacher had more than five years' experience as a special education teacher….and she has never been trained to avoid abuse of students???? And this is "undisputed"????

J.S. III v. Houston County Board of Education, 70 IDELR 219; 877 F.3d 979 (11th Cir. 2017)

The court held that the district could be liable for a 504 violation if an "appropriate person" knew about the violation and was deliberately indifferent to it. In this case, the court held that the principal was an "appropriate person." She was on notice of what was happening with the student, and failed to take proper corrective action. The same analysis applied to the general and

special education teachers. There was some evidence that both of them knew what was happening, could have stopped it, and did not. Two coaches who were aware of what was going on were deemed not to be "appropriate persons" because they did not have supervisory authority over the aide. The basis for the complaint was the allegation that the student was "with some frequency, excluded and isolated from his classroom and peers on the basis of his disability." The teacher's aide had been taking the student out of his classroom to the weight room. This was not authorized by the IEP.

Comment: The end result of this is that the district faces possible liability for discrimination based on disability. The district does not face liability for the alleged verbal/physical abuse because the evidence did not show that "an appropriate person" was on notice of the abuse.

Pangerl v. Peoria USD, 73 IDELR 49 (D.C. Ariz. 2018)

The school "unenrolled" the student pursuant to a state law after ten days of absence. The parent filed for a due process hearing over this issue and the hearing officer dismissed the complaint. The court affirmed that decision noting that the unenrollment decision was a matter of state law. Moreover, the court held that the state law did not conflict with IDEA. The court also dismissed a retaliation claim, noting that such claims cannot be made under IDEA. Retaliation claims are permissible, but here, the plaintiff failed to show a causal connection between the protected activity (efforts to enforce IDEA rights) and the adverse action (the unenrollment decision):

> Plaintiff has simply alleged that T.P. was unenrolled pursuant to a generally applicable state unenrollment statute after T.P. failed to attend school. This is not sufficient to state a retaliation claim under IDEA.

STATE RESPONSIBILITY

Letter to Lipsitt, 72 IDELR 102 (OSEP 2018)

In this letter, OSEP confirms the broad discretion state agencies have in addressing complaints. This includes the authority to order compensatory services upon a finding that a child or group of children were denied appropriate services.

STAY PUT

Paris School District v. A.H., 69 IDELR 243 (W.D. Ark. 2017)

The court held that the Alternative Learning Environment was not the "stay put" placement even though it was the "then current" placement when the due process hearing was requested. The court affirmed the IHO decision on this point, holding that the due process hearing was challenging the ALE placement. The record showed that the mother was not given proper notice that the IEP Team would be considering a change of placement; the meeting was "organized hastily without thorough review of data and without the participation of key people." Moreover, the mother stated that she "knew nothing" about the ALE.

Comment: This is a great illustration of the risks districts create for themselves when they rush a parent into a change of placement, particularly a disciplinary removal.

TRAINING OF STAFF

Paris School District v. A.H., 69 IDELR 243 (W.D. Ark. 2017)

The court denied the general accusation that district staff were inadequately trained. People were properly licensed and certified. However, the specific accusation that the staff that served the student in 5th grade were inadequately trained was upheld. This was largely based on testimony from the coach who was the primary teacher in the Alternative Learning Environment, including this doozy:

> This lack of training manifested itself in the indifference that some of the staff took towards handling A.H.'s disabilities seriously. For example, when asked about accommodations that he made for A.H. while she was in the ALE, Coach Prieur stated "and I mean, I guess, you know, I'll get in trouble for saying this, but I just didn't think she needed some of these accommodations, because she was doing so well on her stuff and so I really didn't make a whole lot of accommodations for her."

Comment: Sentences that begin "I'll get in trouble for saying this" should probably end right there.

TRANSITION

S.G.W. v. Eugene School District, 69 IDELR 181 (D.C. Ore. 2017)

The court held that IDEA does not require any particular transition assessment tool, but "a student interview, without more, is insufficient."

Letter to Anonymous, 69 IDELR 223 (OSEP 2017)

OSEP was asked what it means to "annually update" a transition plan, and whether or not this means that the plan should always be revised with each year. The response says what you would expect: kids change from year to year, and so, it's up to the IEP Team, which must "carefully consider whether the existing IEP's postsecondary goals and transition services remain appropriate to support the child in working toward what he or she hopes to achieve after leaving high school."

OUR BROKEN SYSTEM

E.P. v. Howard County Public School System, 70 IDELR 176 (D.C. Md. 2017)

The court held that the district's evaluation was appropriate. Therefore, the district was not required to pay for an IEE. The court pointed out that IDEA does not require an evaluation to determine whether or not the child is eligible. Nor must the evaluation make a recommendation about eligibility. Instead, the eligibility decision rests entirely with the IEP Team "and other qualified professionals."

Comment: This case provides yet another example of how the special education system is broken due to the crushing weight of rules, regulations, paperwork and litigation. This is a 34-page federal court decision, affirming a hearing officer's decision of 56 pages. None of all this legal mumbo jumbo tells us much about how the student is doing in school. Instead, much of the decision involves the hearing officer's decision to quash subpoenas and to admit into evidence a psychological report that was not disclosed prior to the hearing. Who are the big winners here? The lawyers. The court's decision was affirmed by the 4th Circuit. See E.P. v. Howard County Public School System, 72 IDELR 114 (4th Cir. unpublished)

L.J. v. School Board of Broward County, Florida, 70 IDELR 260 (S.D. Fla. 2017)

The court reversed the hearing officer decision, thus holding that the IEP was properly implemented and the student received FAPE. The court adopted the 5th Circuit standard regarding IEP implementation, putting the burden on the parent to show a "material" failure to implement the IEP. Here, the evidence fell short of that. There were many missed sessions of OT and PT and other services, but the student was absent for 144 days of the school year (!).

Comment: This hopefully brings to closure litigation that has gone on for more than a decade. The first due process hearing involving this student ran for 26 days and resulted in a 191-page order from the administrative law judge. The second due process hearing ran for 18 days over a six-month period. Fifteen months after that, the ALJ issued his 101-page ruling in favor of the parent. This order has now been reversed by this court. Keep in mind the court, in 2017, is reviewing an ALJ order from 2011, concerning a hearing conducted in 2009 about an IEP from 2006-07. Could we have devised a crazier system if we tried?

Jusino v. NYC DOE, 70 IDELR 87 (2nd Cir. 2017)

The IEP called for the student to "climb and descend one flight of stairs, step over step, without railing and while maintaining his head in a neutral posture 80% of the time." The parents argued that the school could not offer FAPE because he was placed at a one-story school, and, therefore, the school would not be able to implement this part of the IEP. The court ruled for the school, noting that the school planned to use an external set of stairs on an adjacent building along with a three-step model.

Comment: Sheesh. The things we fight over. To the Circuit Court level!!

L.M. v. Willingboro Township School District, 70 IDELR 34 (D.C.N.J. 2017)

Based on the district's failure to offer FAPE, the court ordered compensatory educational services for two and a half school years. This amounted to 529 days, at 6.5 hours per day for the

regular school year and 4 hours for ESY. This added up to 3,314.5 hours of compensatory education at the rate of $80/hour. The court gave no explanation for the hourly rate. Thus, the district was ordered to pay $265,160 into a trust fund for the benefit of the student, the money to be used by the parents at their discretion. Parents were awarded attorneys' fees as well.

Comment: here is further evidence of the broken special education due process system. The due process hearing was requested in October 2013. The hearing was not conducted until the following April and proceeded to cover 18 non-consecutive days over a full year. The parties submitted their written closing arguments a full three months after that. The hearing officer issued the decision a full year after that. Thus, a hearing that was requested in October, 2013 was decided in May, 2016. Sheesh.

Doe v. East Lyme Board of Education, 70 IDELR 99 (D.C. Conn. 2017)

Due to six years of violating the stay put rule, the court ordered the district to reimburse the parents for services to the tune of $36,555.94, and to place $203,478.10 in escrow, to be used for services to the student for six years or until he graduates from college, whichever occurs first.

Comment: this case is noteworthy because the compensatory education award was not based on a denial of FAPE, but solely on the stay put violation.

School District of Philadelphia v. Kirsch, 71 IDELR 123 (3rd Cir. 2018, unpublished)

Largely due to faulty communication, the district did not have IEPs in place at the start of the school year for two twins with autism. The parents created a private school and placed the boys there. The court held that the district denied FAPE from September to December of 2013, at which time the district put a good IEP on the table. The parents were entitled to tuition reimbursement from September to December due to the denial of FAPE. But due to "stay put" the parents also obtained reimbursement for the remainder of that school year and all of the next three. That added up to $466,000 along with a boatload of attorneys' fees.