

***WHAT'S NEW IN SPECIAL
EDUCATION LAW
& WHAT ARE THE COURTS
SAYING?***

TIPS TO GUIDE DECISION-MAKING



UL LAFAYETTE 9TH ANNUAL LOUISIANA K-12 SCHOOL
LAW CONFERENCE

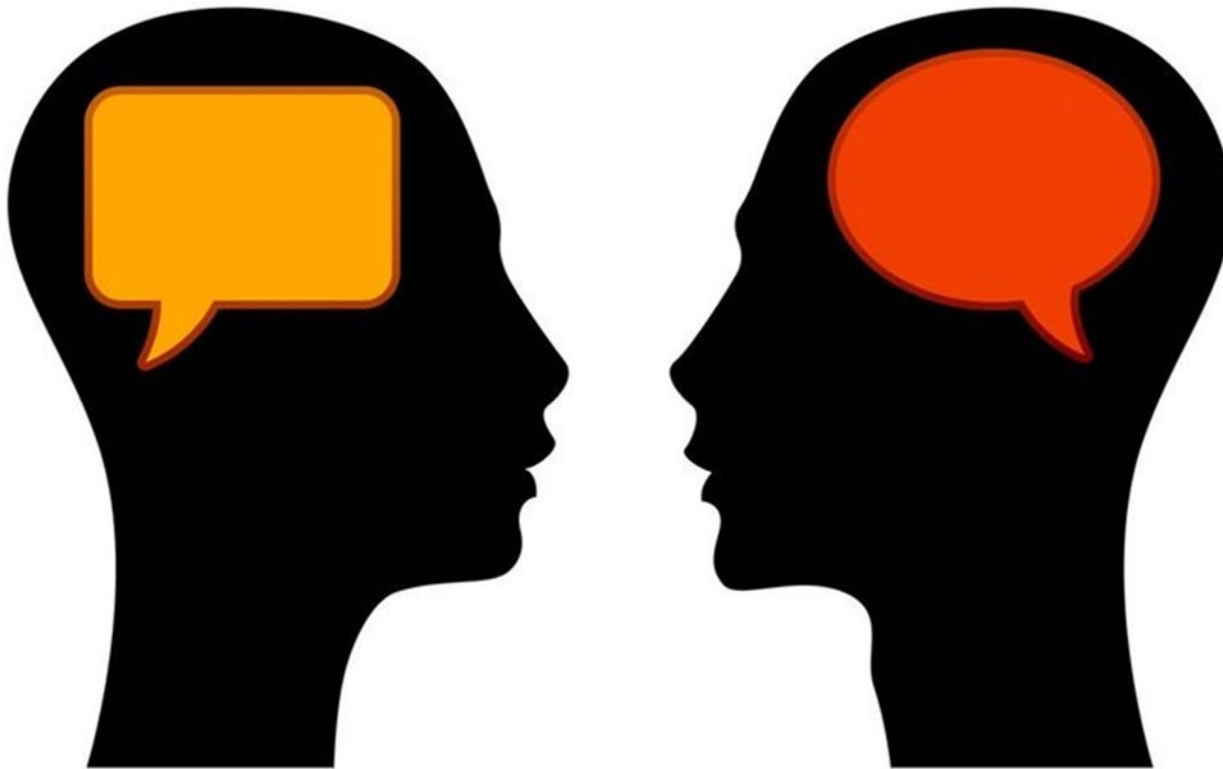
MAY 2, 2024

EDUCATIONAL DILEMMA

IDEA requires states, through local school boards, to provide a free appropriate public education to **ALL** children with disabilities (20 U.S.C. 1400-1482 (2012)).

However, it does not establish substantive **criteria** by which the adequacy of services can be measured other than specially designed instruction in conformity with the students individualized education program.

COMMUNICATION & LANGUAGE



WHAT'S INVOLVED & RESULTS

- **Time**
- **Energy**
- **People**



STEPS

Resolution Session

**Mediation
(Be available)**

Due Process

Federal Court



DUE PROCESS HEARINGS

Requested by either party

BOP is on party requesting hearing!

Decision within 45 days

Mediation is option

Due Process Hearing Requests

- Due process hearings are designed to decide issues affecting the placement of individual children
- The only parties entitled to file due process requests are parents/guardians, school districts or students 18 years of age or older
- Results in a legally binding decision on both parties, unless the decision is changed or overturned on appeal

THINGS TO PONDER

Behavioral Management Plan

Personnel

Scheduling

Facts and good
faith effort



MEDINA V. IZQUIERDO

Abuse of special needs student in **cement isolation room**

N.M. came home from school upset and in physical pain. He told his father that his lower back/buttocks area hurt because a paraprofessional, had forcibly grabbed and pulled his leg, causing him to slam to the ground. Earlier that day, the school's principal, and N.M.'s teacher, had called N.M.'s mother— however, the Complaint is silent about why they called her—but neither mentioned that N.M. had been injured

The school had installed video surveillance cameras in the isolation rooms and in common areas of the school, to allow school officials to monitor behavior and "problematic situations, and keep the students safe. By school policy, Gages Lake kept the video footage for thirty days

MEDINA CONTINUED

Prior to enrolling N.M. at Gages Lake, N.M.'s parents told school officials that N.M. did not respond well to "cement rooms" (unpadded isolation rooms). The school officials assured N.M.'s parents that the school had several alternatives to such rooms—a movement room, a library-like calming room, or the principal's office filled with toys and activities—that N.M. could use to calm down.

Izquierdo lied and said NM tripped. Video indicated otherwise.

Court denied SJ for District and said facts led to triable issue

KLEIN IND. SD. VS. SISK

Termination of tenured SPED teacher for unauthorized assistance in proctoring the state proficiency tests.

Admitted to giving looks and other aids to students.

Placed on leave and recommended for termination.

IH said not enough, but Board voted unanimous to terminate.

Court said IH did not distinguish good cause for termination as opposed to non-tenured status and did not consider lesser discipline.

Issues around administration of high stakes state tests and exceptions.

EDWARD M.-R. V. DIST. OF **COLUMBIA**

IEPs for 4, 5, 6, and 7th grade – No measurable goals, not based on Peer-reviewed research (PRR).

Court said, only last 2 years due to time limitation

Goals were reasonably measurable without being precisely quantifiable and even if not measurable, it did not result in harm.

PRR does not require specification of a particular methodology and even if it did, it was a procedural violation, and parents could not show resulting substantive harm.

Hearing filed 3.5 years ago and still on appeal with DC Circuit

LOS LUNAS PUBLIC SCHOOLS

V. SCHNEIDER

Child has Angelman Syndrome, rare neuro-genetic disorder

Some disruptive behavior by 4th grade (speech therapy, occupational therapy, physical therapy & assistive technology)

Behavior worse in 5th grade

District hired Angelman expert to train teachers, but it didn't work. Offered 30 minutes of services M & Th. At the **cage-fenced** tennis courts but he would not participate w/o mom

Disenrolled him after absences w/ notice to state, but not Parents

Issues in 2020-2021 with distance education, no instruction in math, reading or written language in 6-8 grade.

HO ordered 4 years compensatory ed, and IEE by expert in Angelman Syndrome and IEP facilitated by the expert

DECISION IN SCHNEIDER

District claimed reasonable efforts - Court said no based on the disturbing facts in the record.

District said HO ruling was abuse of discretion by specifying IEE expert and the IEP facilitating role of the expert.

Court said law does not prohibit HO from designating expert in child's disability and record supported expert to help district understand the needs of the child to provide FAPE

Illustrates the difficulty of addressing complex needs of some low-incidence disabilities and broad authority of HO to remedy districts that fail to fulfill IDEA obligations

BOONE V. RANKIN COUNTY **PUBLIC SCHOOL DISTRICT**

3 years prior to 2020-2021 place in private center specializing in students with autism – struggled academically & behaviorally (elopement, aggression and self injurious conduct)

He regressed to K at age 14. Center discharged him as unable to assist based on age and curriculum needs.

IEP team placed at Middle School, with **no alternative** despite parent's safety concerns & lack of plan for elopement issue

HO said IEP not appropriate and ordered a transition plan, a new evaluation, a revised IEP with elopement provision and meaningful parental input Court denied compensatory education because parents never sent student to stay-put placement.

BOONE DECISION

Ample evidence of elopement attempts & BIP did not provide any staff training or other preparation for implementing BIP until the student entered middle school.

District's take or leave it on placement despite parent's expressed concerns = predetermination (??)

Regression indicated inappropriate progress

HO's prospective remedies addressed all FAPE denials so no Compensatory education.

Parent got attorney fees as succeeding on a significant issue that achieved some benefit.

Important for Predetermination issue – the award of prospective remedies only instead of or accompanying compensatory education is appropriate for HO.

PIERRE-NOEL V. BRIDGES **PUBLIC CHARTER SCHOOL**

Medically fragile child – nonverbal – wheelchair-bound.

2021-2022 Kindergarten distance education system-wide

Next year, in person, single transport with a nurse and specialized instruction by a dedicated aide.

However, there are **14 steps** from family apartment to ground and only family member who can help is there Th-F.

District refused to provide someone to help down the stairs – so IEP changed to virtual and removed the Aide. IEP team did not provide in-person support during instruction.

HO said no district responsibility to bring downstairs, but failure to provide in-person support during virtual instruction was denial of FAPE

PIERRE-NOEL OPINION

Specialized equipment – school bus vehicles?

Lifting and carrying is not supportive services requiring carrying student to a bus from residence before school.

Ordered IEP to provide in-person support services during virtual instruction

Dedicated nurse aide would be added back to IEP if child resumes in-school instruction

Complex facts and difficulties of families and limits of the law in remedying difficulties.

This case has been appealed to the Court of Appeals in DC

BEER V. USD 512 SHAWNEE **MISSION**

District said not qualified for IDEA based on Autism & ADHD

Changed 1/2 way through K - after private diagnosis of Autism & ADHD

IEP not proposed until November of 1st Grade

Closed due to pandemic, no progress & changed some things without parental participation or agreement.

HO found child find, evaluation, and IEP violations

Ordered to hire independent consultants for evaluation, IEP formulation, and board-certified behavior analyst services + 25 hours in home compensatory education tutoring

BEER DECISION

Expert witness may provide best practice evidence to inform adjudicator.

Evaluation violated timeline due to lack of informed parental consent and inadequate b/c FBA had **significant defects**.

Procedural violations meant no FAPE!

Other defects were in IEP included outdated data and vague language, and implementation failures resulting in substantial losses to the child and parents.

Remedies upheld.

PROCEDURAL SAFEGUARDS

If too many procedural safeguards are violated, it may constitute substantive violation.

Time

Personnel

Notifications



**ALBUQUERQUE PUB. SCHS. BD. OF EDUC. V.
ARMSTRONG, 1:21-CV-00396 WJ-JHR (D.N.M.
DEC. 13, 2021)**

Methodology for Students with Dyslexia

Parents perceived a lack of progress in reading

HO ordered 1 hour of compensatory education in 1:1 dyslexia-specific reading instruction and ordered IEP team to include writing goals and inclusion support in math

SPIRE could be effective, but district had unreliable and inconsistent measures that = lack of meaningful progress

SPIRE teachers had no specialized training regarding dyslexia; thus, no capacity to provide the needed instruction

Limited impact of Covid discussed (attendance etc.)

PARRISH V. BENTONVILLE SCHOOL DISTRICT, (8TH CIR. **2018)**

4 different children each diagnosed with autism (all with behavior issues involving serious aggression).

Judges are not trained educators so review limited**

Reasonable steps to train teachers; B) Did not use physical force or seclusion that denied FAPE; C) Held programming conferences and informal meetings to propose, implement and modify and communicate behavior and academic progress; D) Collection of BIP data complied with IDEA; E) Strategies not perfect, but complied with IDEA; F) Parents allowed meaningful participation opportunity

CONCLUSIONS

There are Special Education Issues -- not problems

Communication upfront is best

Items to consider:

A. Behavior plan

B. Personnel

C. Schedule

D. Individual Circumstances of the Child

E. What is best for the child under the circumstances

F. Plan for eloping - if necessary

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