

What's New to Special Education Law



University of Louisiana at Lafayette
K-12 Law Conference
April 20, 2015

Background

- My history and perspective
 - A. Working with administrators and Special Education staff – Beliefs of the principal – coffee cup diplomacy -- communication is key
 - preparation – example with hearing impaired case
- No more hearing officers
- Burden of Proof

New Diplomas in Louisiana

- Teachers, administrators parents wide latitude to determine grade promotion and graduation requirements.
- Why – 4 year rate for exceptional children was 33%, general students 72%.
- Superintendent agreed after students have failed high stakes then they can use this law



Continued

- Superintendent White said the bill is now changed from “one that would have recused adults from their responsibility to serve children with disabilities, to a way to serve children who need an alternative assessment program.
- 2 philosophies – (1) children can demonstrate what they know without being derailed by high stakes tests vs. (2) lowering of standards.

Questions?

- How to monitor all the different IEPs?
- Was this done just to increase graduation rates?
- Will this help with drop out rate?
- Are IEP teams prepared for drafting education plans for graduation?
- Will Feds approve? How to prove it does not deprive disabled students of same opportunities as non-disabled peers?

E.R.K. ex rel. R.K. v. Hawaii
728 F. 3d 982 (9th Cir. 2013)

- State changes last day to attend school to age 20
- Alleged violation of IDEA says 21
- Court says must be consistent with IDEA
- Importance? – unilateral changes

Doug C. v. Hawaii

720 F. 3d 1038 (9th Cir. 2013)

- IEP about to expire, parent sick and asks to reschedule
- District holds IEP without parent and recommends moving placement from private to public school and then meets with completed IEP
- Court says parent is vital and strict deadline compliance is unreasonable and after the fact meeting does not remedy particularly when placement changed.

Driessen v. Lockman

518 F. App'x 809 (11th Cir 2013)

- Mother sues for failed FAPE
- Father is legal guardian
- Court dismisses as “parent” does not equal individual who had custody legally terminated.
- Importance?

Administrative Hearings

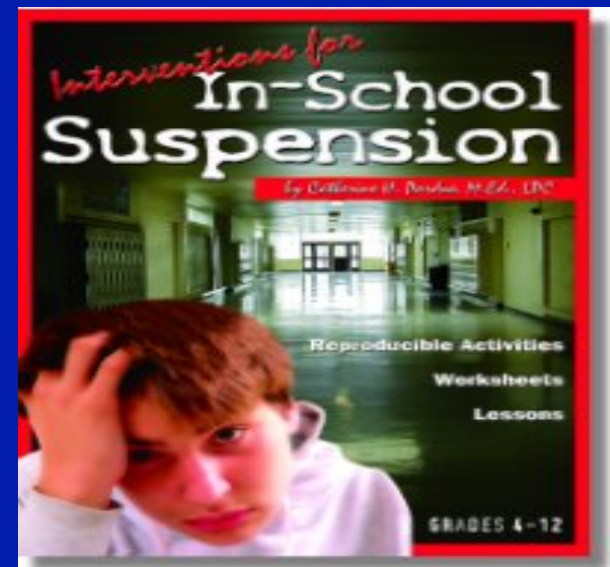
- J.B. v. Avilla R-XII School District, 721 F. 3d 588 (8th Cir. 2013) Must exhaust remedies before suing as HO has expertise
- Muskrat v. Deer Creek Public Schools, 715 F. 3d 775 (10th Cir. 2013) Child in timeout room and allegedly slapped and restrained. Court said common law tort not in IDEA and Timeout room did not shock conscience.

Placement and food allergy

- D.C. v. N.Y. City Dep't of Educ., 950 F. Supp. 2d 494 (S.D.N.Y. 2013) severe seafood allergy. Court said board did not demonstrate placement met allergy needs.
- R.C. v. Keller Indep. Sch. Dist., 958 F. Supp. 2d 718 (N.D. Tex 2013) Disagreement on label. No right to classification, just IEP addresses unique child needs and provide educational benefits.

Discipline – Garmany v. Columbia, 935 F. Supp. 2d 177 (D.D.C. 2013)

- In school suspension is not automatically precluded by IEP that suspensions should not be used to address behavior. Court said ISS is not a suspension and list of possible strategies was not exclusive.



1983 – J.P.M. v. Palm Beach Cnty. School Bd., 916 F. Supp. 2d 1314 (S. D. Fla. 2013)

- Child placed in restraints several times only when used in crisis situations and significant self-injurious behavior or aggression toward teachers or students. Staff trained in Professional Management Crisis Association behaviorally-based system. School wins as parent must prove school's conduct shocks the conscience and was deliberately indifferent or intentionally discriminated.



D.L. v. Baltimore Bd. Of Sch. Comm.,
706 F. 3d 256 (4th Cir. 2013)

- Student in private school diagnosed with ADHD and anxiety
- Public School district offered services, but only if at public school
- Court said school district NOT required to provide services for students who opt out of public school.

Stewart v. Waco Independent School
Dist., 711 F. 3d 513 (5th Cir. 2013)

- Female student with impairments involved in sexual contact with another student
- IEP separated her from male students, but over 18 months three additional contacts
- Sued saying deliberately indifferent – lower court ruled for District, 5th Cir reversed
- Plausible case modifications ineffective and gross misjudgment in failing to change

Who pays private school setting

- Depends on finding of how district provides FAPE, an appropriate IEP and appropriate placement for delivery.
- *Forest Grove School District v. T.A.*, 129 S.Ct. 2484 (2009).
- *Moorestown Township Bd. V. S.D.*, 811 F. Supp. 2d 1057 (D.N.J. 2011).
- *N. T. v. Dist. Of Columbia*, 839 F. Supp. 2d 29 (D.D.C. 2012)

Bullying

- Obligation to ensure a student with disabilities who is bullied, continues to receive FAPE. IEPs and 504 plans can outline approaches to prevent & respond.
- Effective evidence-based practices for preventing and addressing bullying See Dear Colleague Letter at www.ed.gov/blog/2013/08/keeping-students-with-disabilities-safe-from-bullying/

Special Education & Athletics

- Two years ago USDOE declared students with disabilities have to be given fair shot to play on traditional sports teams or have their own league. www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf
- Who handles, special education teachers, coaches, parish recreation departments?
- Qualified with aid, service or benefit??

Contact Information

- **Nathan Roberts, J.D., Ph.D.**
- **Interim Dean, College of Education**
- **University of Louisiana at Lafayette**
 - **(337) 482-1026**
 - **nroberts@louisiana.edu**