

*Current Legal issues facing  
K-12 schools: New  
Developments in Special  
Education Law*



2<sup>nd</sup> Annual UL Lafayette  
Louisiana K-12 Law Conference  
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# Background

- History
- Training
- Hot Topics
  - Search and Seizure
  - Harassment and Bullying
  - Non-public School placement
  - Extra-Curricular Activities

# Evaluations

- South Kingstown School Committee v. Joanna S, 773 F.3d 344, (1st Cir. 2014).
- Mother sought private placement and 8 new evaluations
- Parties settled for 4, performed them, then 6 months later mother sought 10 more
- Court ruled for school – evaluation done by qualified, licensed & experienced evaluator and other evaluations were good since there was no change of conditions.
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# Developing IEPs

- R.L., S.L. ex rel. O.L. v. Miami-Dade Sch. Bd,  
757 F.3d 1173 (11th Cir. 2014)
- When high school arrived parents wanted smaller high school
- IEP team recommended large high school
- Child's symptoms returned and he received home instruction
- Ct. ruled for student because IEP team had predetermined student's placement

# Change in Placement

- M.R., J.R. ex rel. E.R. v. Ridley School District, 744 F.3d 112, (3d Cir. 2014) Parents of a child who had experienced learning difficulties and health-related problems since kindergarten enrolled her in a private school and requested a due process hearing. HO found that the school district's IEP lacked a *research based, peer reviewed reading program as required by the IDEA. Appealed!*

# Reversed for school, But

- Ct. said admin. ruling validating the parents' decision to move their child from a public school to a private school makes the private school the child's then current educational placement. The court stated that a school district is required to fund a private school placement, if it was either the educational setting outlined in the child's IEP, or it was later designated by a hearing officer as the appropriate setting for the child.

# Change in placement II

N.W. ex rel. J.W. v. Boone County Board of Education, 763 F.3d 611  
(6th Cir. 2014).

- Child in private school under IEP
- Parent unhappy and moves to new school
- New IEP planned to transition to public
- No agreement on, court ruled parents failed to show it would not provide FAPE
- 6<sup>th</sup> Circuit said district must approve placement for it to serve as status quo and parents cannot unilaterally decide school that will serve as status quo

# Placement

A.K. ex rel. E.K. v. Gwinnett County School District, 556 F. App'x 790, (11th Cir. 2014).

- Child in moderate autism spectrum disorder class
- Request for home schooling and board countered with 2 hours at school and 3 home parents rejected claiming strict diet.
- Ct. said diet not prescribed by medical doctor and no life-threatening condition. EVIDENCE showed she was best served by school setting with social interaction with peers



# LRE

T.M. ex rel. A.M. and R.M. v. Cornwall Central School District,  
752 F.3d 145(2d Cir. 2014).

- Child attend special education class in summer and general Ed in fall with special education and related services
- Issue is summer school which was found not to be LRE. Lower ct. said OK, because district did not have to follow LRE for summer as it did not offer one.
- \*Summer program was part of overall placement and subject to same LRE
- Can't avoid LRE by not operating one

# Transitional Services

Jefferson County Board of Education v. Lolita S., 581 F. App'x 760  
(11th Cir. 2014).

- Evaluated in 8<sup>th</sup> grade and found eligible
- When he was moved to 9<sup>th</sup> grade he failed most of his classes
- 10<sup>th</sup> grade added items, but mom rejected
- Ct. said transition inadequate because no measurable post-secondary goals based on an age appropriate assessment and transition services not described
- Failure to provide vocational assessment meant he got what everyone else got.

# Reimbursement

C.L. and G.W. ex rel. C.L. v. Scarsdale Union Free School District,  
744 F.3d 826 (2d Cir. 2014).

- Unilaterally enrolled in private school
- Finding of private school as overly restrictive and school district did not contest that it failed to provide FAPE
- Ct. said when district denies FAPE, a private placement is not inappropriate merely b/c it is more restrictive than public
- No FAPE vs. more restrictive?

# Attorney Fees

C.W. ex rel. K.S. v. Capistrano Unified School District, 784 F.3d  
1237 (9th Cir. 2015).

- What is frivolous or not?
- Very little caselaw
- Novel question
- More than poorly pled
- Any basis for belief by parents
- Improper purpose?

# Harassment & Bullying

Nevills v. Mart Independent School District, 608 F. App'x 217  
(5th Cir. 2015).

- Child moved to different school by parents
- Claimed school deliberately indifferent
- Evidence supported discipline meted out to students involved in the harassment
- School conducted training for students and teachers to counter bullying.
- No evidence school officials punished student or removed him from class as intentional discrimination

# Nonpublic School

Doe v. East Lyme Board of Education, 790 F.3d 440  
(2d Cir. 2015).

- Issue: Does a school district in which a child resides have an obligation to offer FAPE to that child if (s)he has been enrolled in a nonpublic school outside of the district?
- Parent transfers child from private SPED school to a private religious school.
- School initially agreed to fund related services but stopped after rejection of IEP for placement in public SPED program

# Non-public school cont.

- Duty to provide FAPE does not end when a child is enrolled in a nonpublic school outside the district
- Even though school district where nonpublic school is located has child find duty, FAPE stays with district of residence
- Must still OFFER FAPE
- Here did not fund related services under stay put. Must perform evaluations

# Appropriate Placement

Sneitzer v. Iowa Department of Education, 796 F.3d 942 (8th Cir. 2015).

- Issue: Is an IEP team required to include extracurricular activities in a child's IEP?
- Normally education is a right, not extracurricular
- Here a child tried out for show choir and got cut
- Parent claimed denied due to disabilities
- School allowed participation at lower level, but mom insisted on upper level



# Extracurricular Continued

- IEP team said not necessary for FAPE
- Mother withdrew and placed in private
- Court ruled FAPE was offered as child was making academic progress
- Implication – extracurricular activities do not need to be written in IEP if it is not required for a child to receive educational benefits

# Results

- Students with disabilities are entitled to participate in extracurricular activities and may require accommodations so they may do so. However, qualifications for participation do not need to be waived in most cases.
- Whether the accommodations need to be written into an IEP is questionable.
- More tomorrow at 8:30!

# Contact Information

- Nathan M. Roberts, J.D., Ph.D.
  - Dean, College of Education
- University of Louisiana at Lafayette
  - (337) 482-1026
  - [nroberts@louisiana.edu](mailto:nroberts@louisiana.edu)