RECENT LEGAL DEVELOPMENTS SINCE LAST YEAR'S MEETING: HOT TOPICS AND THE YEAR IN REVIEW

Julie J. Weatherly, Esq.
Resolutions in Special Education, Inc.
6420 Tokeneak Trail
Mobile, AL 36695
(251) 607-7377
JJWEsq@aol.com
Website: www.specialresolutions.com

Florida AMM
September 9, 2014

Wow! From a national perspective, the litigation in the area of educating students with disabilities does not appear to be slowing down. Here are the highlights of some important court and agency decisions since last year's AMM.

BULLYING AND DISABILITY HARASSMENT

A. Estate of Lance v. Lewisville Indep. Sch. Dist., 62 IDELR 282, 743 F.3d 982 (5th Cir. 2014). There is no evidence that the district was deliberately indifferent to bullying and, therefore, it is not liable for the student's suicide in a school restroom. Rather, the district took affirmative steps to stem harassment of the 4th grader with ADHD, a speech impairment and ED by repeatedly investigating incidents of harassment and punishing all students involved. In addition, the school psychologist observed the student in class to gain insight into his difficulties with a specific classmate. A teacher testified that she separated the student from another by not allowing them to sit or stand near each other or putting them in groups together. Further, the district's anti-bullying policies met national standards and the district had spoken to students about bullying both before and after the student's suicide. The deliberate indifference standard does not require districts to purge their schools of bullying or harassment, but to respond in a manner appropriate to the circumstances.

B. Moore v. Chilton Co. Bd. of Educ., 62 IDELR 286 (M.D. Ala. 2014). Parents cannot use Section 504 or the ADA to hold district liable for student's suicide based upon alleged bullying. Whether or not her Blount's disease qualifies as a disability or whether others' comments about her weight and limp related to her medical condition—going beyond mere name-calling—the parents needed to show that the district had actual notice of the harassment and was deliberately indifferent to it. Where a district only has actual knowledge if an official with authority to take corrective action receives clear notice of disability harassment, as here, there can be no liability. Although the student's friend informed her science teacher about bullying in the hallways and the bus driver overheard another teenager mocking the student's weight, the parents did not show that those staff members qualified as authority figures. Further, those staff members took steps to help the student, where the science teacher monitored the student in the hallways between

classes, and the bus driver changed the harassing student's seat for two weeks on the bus. Given the efforts of staff to assist the student, the district was not deliberately indifferent to peer harassment and judgment is granted in the district's favor.

C. T.K. v. New York City Dept. of Educ., 63 IDELR 256 (E.D. N.Y. 2014). School district's response to peer bullying was inadequate where the district failed to address the issue in the disabled child's IEP or BIP. A district denies FAPE where it is deliberately indifferent to or fails to take reasonable steps to prevent bullying that substantially restricts the educational opportunities of the disabled child. If an IEP team has a legitimate concern that bullying will significantly restrict a child's education, it must consider evidence of bullying and include an anti-bullying program in the student's IEP, which was not done in this case. Here, the parents tried to discuss bullying during a June 2008 IEP meeting but were told by district members of the team that it was not an appropriate topic for discussion. Further, the IEP focused on changing behaviors that made the child susceptible to bullying rather than to ensure that peer harassment did not significantly impede her education. It was clear that the bullying interfered with the child's education, where she began bringing dolls to class for comfort, she gained 13 pounds and had 46 absences or tardies in one school year. Further, her special education itinerant collaborative teachers testified that classmates treated the child like a "pariah" and laughed at her for trying to participate in class. Thus, the district's inadequate response, coupled with the impact on the child's learning, denied FAPE and entitled her parents to recover the cost of the child's private schooling.

RETALIATION

A. Batchelor v. Rose Tree Media Sch. Dist., 63 IDELR 212 (3d Cir. 2014). Where the IDEA allows parents to present a due process complaint with respect to "any matter relating to the provision of FAPE," this parent is required to exhaust administrative remedies prior to bringing her retaliation claims under Section 504 and ADA seeking money damages. According to the parent's complaint, the district refused to implement the student's IEP, stopped paying for private tutoring and reassigned the student to a teacher that he considered to be a "bully" after the parent sought to enforce a 2010 FAPE settlement. Based upon that, it is "plain" that the parent's retaliation claims "palpably related" to the district's provision of a FAPE. Thus, the exhaustion requirement applies, and the parent's argument that her request for money damages brought her claim outside the scope of the IDEA is rejected.

B. Pollack v. Regional Sch. Unit 75, 63 IDELR 72 (D. Me. 2014). Where the district had a history of providing the parents copies of education records for free, it could be retaliation under 504 where the parents claim that after they filed a request for due process and requested the assignment of a new teacher, the district denied their request for copies of records and later offered to provide them for $2,600. Because this could have stemmed from the parents' advocacy efforts, the parents have pled a viable claim for retaliation.

CHILD FIND/EVALUATIONS

A. Demarcus L. v. Board of Educ. of the City of Chicago, 63 IDELR 13 (N.D. Ill. 2014). District court did not err in finding that there was no child find violation. A parent seeking relief for a child find violation must show that the district 1) overlooked clear signs of disability and negligently failed to order an evaluation; and 2) had no rational justification for its decision not to evaluate. Here, the parent failed to meet either standard. While the child was rude and discourteous, had disrupted classroom activities and engaged in behaviors such as fighting and yelling when he did not get his way, there was no fault in the district's belief that it could manage the child's behaviors using classroom-level interventions. District personnel managed and de-escalated the child's behavior through the first semester of 2011 while he was in second grade and the district conducted an IDEA evaluation in late 2011, after it suspended him twice for disrupting classroom activities and learned of his subsequent psychiatric hospitalization.

B. Timothy F. v. Antietam Sch. Dist., 63 IDELR 70 (E.D. Pa. 2014). Parents of student with math difficulties did not show that a psychologist's administration of two unconventional testing instruments invalidated the district's evaluation and determination that the student was not eligible for services. While the psychologist conceded that DIBELS was not to be used for determining IDEA eligibility and that the GMADE (Group Mathematics Assessment Diagnostic Evaluation) should not be used for a significant discrepancy analysis, the psychologist did not base her recommendation on the results of either test. Rather, she used the WISC-IV to evaluate the student's ability and used the WJ-III to measure the student's achievement. Using the DIBELS and GMADE to obtain additional perspective on the student was not an error on the psychologist's part.

C. Rodriguez v. Independent Sch. Dist. of Boise City, 63 IDELR 36 (D. Idaho 2014). Where the district requested documentation of an illness or accident in response to a parental request for homebound services based upon his increased anxiety about interactions with his classroom teacher and bus drive, it violated the IDEA. It was not the parents' responsibility to prove the student's anxiety was more severe than usual. Rather, it was the district's duty to evaluate the student in light of the parents' legitimate concerns and the student's physician's recommendation. Where the student went without services for 8 months, the district's summary rejection of the parents' request for homebound services resulted in a denial of FAPE.

ELIGIBILITY

A. W.W. v. New York City Dept. of Educ., 63 IDELR 66 (S.D. N.Y. 2014). The failure to explicitly mention a diagnosis of dyslexia in the IEP goals for an LD student is not fatal to the IEP because the IEP goals were adequately designed to address the student's learning challenges, which include not only dyslexia, but also dyscalculia and dysgraphia.

B. D.A. v. Meridian Joint Sch. Dist. No. 2, 62 IDELR 205 (D. Idaho 2014). Although Idaho law defines "educational performance" to include nonacademic skills such as daily life

activities, mobility, vocational skills, and social adaptation, student with autism is not eligible for services. This is so because he performed at least as well as his nondisabled peers in courses such as drama, personal finance, Web design, and broadcasting. In addition, the evidence showed that the student overcame his pragmatic and social difficulties to the extent necessary to succeed in the general education setting. Clearly, the student does not need special education to receive an educational benefit and, at most, requires related services that do not qualify as special education under Idaho law.

C. M.M. v. New York City Dept. of Educ., 63 IDELR 156 (S.D. N.Y. 2014). Student with anxiety and depression but good grades is a "child with a disability," as her emotional disturbance impacted on her grades because she could not come to school as evidenced by the district's agreement to provide two months of home instruction to her. Not only did the student miss several weeks of classes during the fall semester, but she did not attend at all from November 2007 to January 2008. She also did not earn the minimum number of credits required to move on to the next grade. Because district erred in finding student ineligible for IDE services, parents may recover the cost of her residential placement.

D. L.J. v. Pittsburg Unif. Sch. Dist., 63 IDELR 133 (N.D. Cal. 2014). Although the ALJ may have erred in concluding that the student with a history of impulsivity and noncompliant behaviors was not SLD, OHI or ED, her flawed analysis did not undermine the ultimate determination that the student was not eligible under the IDEA for special education services. The academic and behavioral progress that the student made after receiving general education interventions demonstrated that he is not a "child with a disability" under the IDEA where eligibility has two distinct components: the existence of a disability and the need for special education. While the student's performance before being moved to a highly structured classroom with a one-to-one behavioral aide showed he had an SLD, OHI and ED, the ALJ's conclusion that he did not need special education was correct. While the ALJ erred in considering the impact of general education interventions in the first prong of her eligibility analysis, she was correct to weigh it in determining the student's need for special education services. Neither the highly structured setting nor the one-to-one aide qualified as "special education."

EVALUATION/REEVALUATION

A. West-Linn Wilsonville Sch. Dist. v. Student, 63 IDELR 251 (D. Ore. 2014). School district should have re-evaluated a student's behavioral needs and convene an IEP meeting before changing his educational placement. When the student began punching, shoving and using threatening gestures during his third-grade year, the district should have evaluated the student rather than discontinuing his participation in a mainstream music class, removing him from an inclusion PE class with others in his self-contained autism program and delivering his one-to-one instruction in a room next to the principal's office. Clearly, the district had notice of the need for a reevaluation by April 6, 2011, when the principal informed the director of student services that the special education teacher felt unsafe around the child. Although the district argued that it was merely implementing short-term solutions to accommodate the child until the end of the school

year, it response "essentially turned the reevaluation process on its head." Thus, the district is ordered to reevaluate the student, convene an IEP meeting and identify an appropriate placement for the upcoming school year. The ALJ's award of tuition reimbursement, however, is denied based upon the parents' failure to provide the 10-day notice of private school placement to the district and their lack of cooperation with the district's efforts to develop an IEP for the child's 4th grade year.

INDEPENDENT EDUCATIONAL EVALUATIONS (IEEs)

A. T.P. v. Bryan Co. Sch. Dist., 63 IDELR 45 (S.D. Ga. 2014). District that evaluated a student with autism in September 2010 is not required to fund an IEE that his parents requested nearly 26 months later. This is so because the IDEA's two-year statute of limitations period bars the parents' request for a publicly funded IEE. It is the September 2010 evaluation that forms the basis for the parents' IEE request, not when the district denied their request in December 2012.

PROCEDURAL SAFEGUARDS/VIOLATIONS

A. Marcus I. v. Dept. of Educ., 63 IDELR 245 (9th Cir. 2014) (unpublished). Even though the ED's prior written notice of proposed placement lacked specificity, it did not impede the parents' participation in the IEP process. Where the written notice provided vaguely for placement in the "public high school in his home community," the IEP meeting was held at the high school that the parent's other children attended, included staff who worked only at the school, and the team discussed how to implement the student's IEP at the high school. In addition, the student's transition teacher testified that concerns for the student's safety were discussed because the campus was not fully fenced and the student had attempted to run away from his private school on one occasion. Because the IEP team discussions indicated the intent to educate the student in the school that his siblings attended, the failure to include more detail in the notice was a harmless procedural error.

B. R.L. v. Miami-Dade Co. Sch. Bd., 63 IDELR 182 (11th Cir. 2014). To avoid a finding of predetermination of placement, a school district must show that it came to the IEP meeting with an open mind and that it was "receptive and responsive" to the parents' position at all stages. While some district team members seemed ready to discuss a small setting within the public high school as requested by the parents, the LEA Representative running the meeting "cut this conversation short" and told the parents that the they would have to pursue mediation if they disagreed with the district's placement offer at the Senior High School. "This absolute dismissal of the parents' views falls short of what the IDEA demands from states charged with educating children with special needs."

C. G.W. v. Rye City Sch. Dist., 62 IDELR 254, 554 Fed. Appx. 56 (2d Cir. 2014) (unpublished). District court's decision is upheld finding that district did not predetermine placement merely because private school representatives from the child's private school did not physically attend IEP meetings. Indeed, the team considered information from the private school representatives offered by phone and, as the district court pointed out, the private school's IEP liaison and the child's science teacher

participated in the relevant IEP meetings by phone. In addition, as the district court observed, the IEP team incorporated many of the private school employees' suggestions into the child's programs, and the science teacher helped draft his goals and offered suggestions for program modifications. Further, the IEP team added ESY services to the child's second grade program based on the private school representatives' concerns about regression. Thus, given the private school's participation, no predetermination occurred and the district court's analysis is adopted.

D. M.A. v. Jersey City Bd. of Educ., 63 IDELR 9 (D. N.J. 2014). Educational placement does not include the specific location where a child will receive services. Rather, it refers to the type of placement and services a district is offering. Where the student's father attended an IEP meeting in June 2012 and the IEP team decided to transition the student from a private special education school to a public school class for children with autism, no additional meeting was required prior to the proposal that the specific location of the placement would be in a specific teacher's classroom. In addition, the student remained in his private school during the pendency of the parents' claim. Thus, even if the district's failure to include the parents in discussions about the specific location of services amounted to a procedural violation, the error did not result in educational harm to the student.

E. Rachel H. v. Department of Educ., 63 IDELR 155 (D. Haw. 2014). Parents are not entitled to reimbursement for unilateral private placement where the district's proposed IEP, which her father helped develop, called for her to attend a program at the high school with one-to-one support. When the parents notified the district that they were moving to the opposite side of the island, the district asked the parents for their new address, so that it could identify the high school closest to their new home that could implement the IEP. The letter asking for the new home address was not indicative of a unilateral change in the student's placement because it did not alter the services provided for in the proposed IEP.

F. Letter to Breton, 63 IDELR 111 (OSEP 2014). As long as districts ensure that steps are taken to secure the information, states may allow them to distribute IEPs and progress reports to parents via electronic email where parents agree to it. IDEA provides that parents may elect to receive prior written notices, procedural safeguards and due process complaints by email if the district makes that option available. In addition, OSEP has previously stated that districts may use email for carrying out administrative matters under the IDEA as long as the parents and district agree to it. In addition, OSEP has previously stated that states may use electronic or digital signatures for consent if they take steps to ensure the integrity of the process. Finally and with respect to progress reports, the manner and format of reporting progress is within the discretion of state and local officials.

IEP CONTENT

A. R.B. v. New York City Dept. of Educ., 63 IDELR 74 (S.D. N.Y. 2014). Because of space limitations on the district's IEP form, the IEP team was not able to include details

in the field designated as "annual goals." However, the team used the "short-term objectives" field to expand upon each goal. Although the annual goals in the IEP were "short and broadly worded," the IEP contained detailed and objective standards that allowed for progress measurement on a short and long-term basis. For example, the student's reading comprehension skills could be measured, in the short term, by whether he is able to answer certain questions about a text at a sufficient rate of accuracy as observed and tested by his teacher. Because all of the IEP objectives were detailed, measureable and tailored to the needs of the student, the lack of detail in the goals themselves did not result in a denial of FAPE. In addition, the lack of baseline data in the goals did not amount to a procedural violation because they were stated in absolute terms that the district could measure without a baseline.

B. R.E.B. v. State of Hawaii Dept. of Educ., 63 IDELR 105 (D. Haw. 2014). Where the IEP stated that the autistic student would receive specialized instruction in the general education setting for science and social studies activities "as deemed appropriate by his Special Education teacher/Care Coordinator and General Education teacher," this provision is consistent with LRE principles and does not violate the IDEA. Rather, the language ensures the student will have access to general education science and social studies activities when appropriate, and to the maximum extent possible, based on his needs and abilities. It also affords teachers with necessary flexibility because their particular lessons and their propriety for the student's inclusion, may not be determined far in advance, and the potential need to convene an IEP team each time such an opportunity arose would, in practical terms, mean that the student would lose out on an educational opportunity. Thus, the IHO's decision that the placement provision gave the student's teachers appropriate discretion to decide his participation in specific academic activities is affirmed.

THE FAPE STANDARD

A. T.E. v. Cumberland Valley Sch. Dist., 62 IDELR 204 (M.D. Pa. 2014). Where the parent's IEP challenge appears to stem from her "strong belief" that her child would receive better educational services if she continued in a private school, the IDEA does not require the district to provide the best education possible. Rather, the district is to develop an IEP that provides the student with a meaningful educational benefit, and the IEP here meets that standard. The IEP identifies the student's needs and her present educational levels; it sets goals in multiple areas; and it provides for individualized reading instruction designed to meet her needs.

RELATED SERVICES

A. R.A.G. v. Buffalo City Sch. Dist. Bd. of Educ., 63 IDELR 152 (2d Cir. 2014) (unpublished). District may not use the IDEA's exhaustion requirement to shield itself from a class action lawsuit challenging its alleged policy of delaying the provision of related services until the third week of the school year. The systemic nature of the alleged violations of IDEA and 504 allows the parent to seek relief on behalf of all

affected students and an exception to the exhaustion requirement exists when the parent alleges "broad system violations."

BEHAVIOR/FBA'S

A. C.F. v. New York City Dept. of Educ., 62 IDELR 281, 746 F.3d 68 (2d Cir. 2014). While the failure to conduct an FBA does not amount to an IDEA violation where the IEP identifies the student's behavioral problems and implements strategies to address them, that was not the case here. The lack of an FBA in this case resulted in the development of an inappropriate BIP which caused the district to offer an inappropriate placement. The IEP team drafted a vague BIP that failed to match the child's behaviors with specific interventions and strategies. Further, the deficient BIP had an adverse impact on the team's placement recommendation. Thus, the parents are awarded tuition reimbursement for private schooling.

B. M.L. v. New York City Dept. of Educ., 63 IDELR 67 (S.D. N.Y. 2014). Where the autistic student's IEP identified all of her problematic behaviors and included appropriate behavioral strategies and goals, the parents' request for private school tuition is denied. The failure to conduct an FBA does not result in a denial of FAPE if the IEP adequately addresses the child's interfering behaviors. Although the district committed a procedural violation by failing to conduct its own FBA as required by New York regulations, a recent FBA conducted by the student's private school provided the IEP team with sufficient information. The private school FBA, conducted just one month before the IEP meeting, identified all factors that contributed to the student's behavioral issues and offered theories about the causes of those behaviors. In fact, the district's psychologist testified that it was one of the "more extensive FBA's he has reviewed." Not only did the IEP identify all of the student's problem behaviors, it also included many of the behavioral goals and strategies that the private school had used for the student. Thus, the district's failure to conduct an FBA did not result in a denial of FAPE.

C. E.H. v. New York City Dept. of Educ., 63 IDELR 47 (S.D. N.Y. 2014). Where the school district had sufficient evaluative data to determine the underlying cause of a private school student's problem behaviors, its failure to conduct a "formal" FBA did not entitle the parent to recover the student's private school costs. While New York's special education regulations require a district to conduct a functional behavioral assessment of a child whose behaviors impede his own learning or the learning of others, the regulations do not require a formal assessment of the child's behavioral problems. Rather, the regulations state that the FBA shall "be based on multiple sources of data," including, but not limited to, information obtained from direct observation, information from the child, information from teachers and services providers, a review of the child's record, and other sources (including information provided by the parent). The district's "informal" FBA did not violate the IDEA's procedural requirements where the IEP team relied on a classroom observation of the student by a school psychologist, the input of his classroom teacher about the nature and cause of his disruptive behaviors and information from the parent. Thus, the informal FBA provided all of the information the IEP team needed.

DISCIPLINE

A. Ocean Township Bd. of Educ. v. E.R., 63 IDELR 16 (D. N.J. 2014). District is not required to allow 18-year-old with ADHD, impulse control and adjustment disorder to return to his home high school to finish out his senior year while his mother challenged his suspension for bringing a knife to school. The IDEA allows a district to move a student with a disability to an interim alternative educational setting for up to 45 days for such offenses—regardless of whether the offense was a manifestation of disability. The student's act of carrying a knife to school allowed the district to place him in the IAES for up to 45 days. In addition, the subsequent MD review showed that the student's conduct was not related to his disability; thus, the alternative setting became his "current setting" for stay-put purposes when the parent challenged it. While the student would not be able to finish his senior year with his peers if the district did not allow his return to the high school, the severity of the student's misconduct, his history of problem behaviors, and the district's interest in maintaining a safe learning environment supported an order for an injunction to continue the student's alternative placement.

TRANSITION SERVICES

A. R.R. v. Oakland Unif. Sch. Dist., 62 IDELR 287 (N.D. Cal. 2014). District's motion to dismiss is granted where there was 3 months left before the student turned 16 and time to incorporate into the student's IEP a postsecondary transition plan. While the case will be dismissed, however, the district should convene an IEP meeting so the student will have an appropriate transition plan in place on his 16th birthday. In addition, the parents' 504 claims are dismissed because there is no right to postsecondary transition planning under Section 504.

B. D.C. v. Mount Olive Township Bd. of Educ., 63 IDELR 78 (D. N.J. 2014) (unpublished). Courts are not to evaluate IEPs in hindsight and must consider the evaluative data available at the time an IEP is developed and determine whether the IEP was reasonably calculated to provide an educational benefit. While the former high school student with autism did not ultimately attend college, pursue a career in computer animation, or live independently as set out in his postsecondary transition plan, the plan was not inadequate at the time it was written. The IEP identified agencies that offered vocational services as required by state law and the district administered a career interest inventory and entered the results into its college and career planning software program. In addition, no member of the student's IEP team stated a belief that the student's wish to attend college and work in theater arts was unrealistic or unachievable.

METHODOLOGY

A. A.S. v. New York City Dept. of Educ., 63 IDELR 246 (2d Cir. 2014) (unpublished). Parents are not entitled to reimbursement for placement of their autistic child in a learning center for children with autism that employs ABA. The parents' claim that the "overwhelming testimony" at the IEP meeting and due process hearing showed that the student would not benefit from the TEACCH methodology is rejected where the school

district's witness testified that TEACCH was an appropriate instructional method for the student. While the parents may prefer that their child attend an ABA-based program, there was no evidence that ABA was required for the student to receive educational benefit. Thus, the court will defer to the district's choice of educational methodology.

B. Poway Unif. Sch. Dist. v. K.C., 62 IDELR 199 (S.D. Cal. 2014). Court cannot yet determine whether the district's failure to provide CART services to the student deprived her, under the ADA, of an equal opportunity to participate in her classes. The student needs to show the accommodations provided were not reasonable and that she was unable to participate equally in her classes without CART. A school district's obligation under the ADA to provide a specific auxiliary aid or device will depend on the individual's request and a comparative analysis of the services provided to individuals with or without disabilities. The district contends that it provided the student with meaningful access by discussing the parents' request for CART, responding in writing, and offering an effective alternative. However, the student alleges that she had difficulty following class discussions and that the intense concentration require4d to use the meaning-for-meaning transcription system provided by the district caused her to suffer headaches and feel exhausted by the end of the school day. The court needs to make further findings as to whether the student's access to class discussions was meaningful before it can enter a judgment on the ADA claim.

C. W.D. v. Watchung Hills Reg. High Sch. Bd. of Educ., 62 IDELR 299 (D. N.J. 2014) (unpublished). While the parent of a teenager with dyslexia and ADHD might have wanted the district to provide detailed information about her son's proposed reading program, the district's failure to discuss education methodologies or teacher qualifications did not entitle her to relief under the IDEA. The district did not impede the parent's participation in the IEP process, and while districts must develop IEPs that are designed to confer a meaningful educational benefit, they have no obligation to maximize a student's potential. This "basic floor of opportunity" standard also applies to the information the district members of the IEP team are required to share with the parents of students with disabilities. Thus, while the parent requested information about the educational methodologies the district intended to use and the qualifications of the teachers who would provide her son's instruction, the district had no obligation to provide those details, and the parent has not shown that, in this specific instance, this lack of information would sufficiently restrict the student's right to access educational benefits and opportunities or the parent's right to meaningfully participate. Even if the failure to provide the information the parent requested amounted to a procedural violation of the IDEA, it would be harmless. In addition, the parent's failure to provide appropriate notice of the student's unilateral private placement barred her reimbursement request.

PRIVATE SCHOOL/RESIDENTIAL PLACEMENT

A. C.L. v. Scarsdale Union Free Sch. Dist., 63 IDELR 1, 744 F.3d 826 (2d Cir. 2014). District court's decision in favor of the school district is reversed and tuition reimbursement for private schooling at Eagle Hill of 4th-grader with ADHD and a nonverbal learning disability is granted to the parents. The district court's focus on the

fact that the private school was too restrictive and did not serve any nondisabled students was misplaced. Although courts may consider the restrictiveness of a private placement when determining whether it is appropriate, courts must also look at the services the private program offers. Here, the private school offered a research-based curriculum that was individualized for each student and this student spent two periods of each school day in tutorials focused on written expression and study skills—two of his most significant areas of need. In addition, the school provided the student with an advisor who met with him daily, observed him in class and participated in weekly staff meetings, none of which were mentioned by the reviewing hearing officer. Importantly, the student made significant progress at the private school; thus, the fact that it was a restrictive environment did not make it inappropriate. Because the district denied FAPE to the student, a private placement is not inappropriate merely because the environment is more restrictive than the public school alternative. In addition, the IDEA's LRE provision is aimed at preventing *schools* from segregating students with disabilities, not to restrict parent options.

B. Reyes v. New York City Dept. of Educ., 63 IDELR 244 (2d Cir. 2014). Where student's IEP provided teenager with autism with a one-to-one paraprofessional for the first three months of the school year to help him transition from a private school that he had attended since 2007, it was inadequate to meet the student's needs. This is so, even though there was an "understanding" to revisit the student's continued need for a one-to-one para later in the school year. "If the school district were permitted to rely on the possibility of subsequent modifications to defend the IEP as originally drafted, then it could defeat any challenge to any IEP by hypothesizing about what amendments could have taken place over the course of a year. The IDEA's tuition reimbursement system cannot function as intended unless parents have a clear understanding of the services their children will receive throughout the school year. Thus, courts may not consider the possibility of mid-year amendments when deciding the appropriateness of an IEP in a private school reimbursement action.

C. Ward v. Board of Educ. of the Enlarged City Sch. Dist. of Middletown, 63 IDELR 121 (2d Cir. 2014). District is not responsible for reimbursing parents for residential placement of their son. In order to obtain such reimbursement, parents must demonstrate that the private school chosen by them offered instruction specifically designed to meet the student's unique disability-related needs. Although this student had an SLD in math, the out-of-state residential school did not implement any strategies to assist the student in making progress. Rather, the school placed her in a lower-level consumer math class, where her ongoing struggles with math were particularly noteworthy in light of her performance in a more challenging math class the prior year where she received specialized instruction. In addition, the student's lack of emotional regulation impeded her learning and interactions with others, but were also not addressed by the private residential school.

D. K.E. v. District of Columbia, 62 IDELR 236 (D. D.C. 2014). Although the district's failure to have an IEP in place by the first day of school (and did not have one in place until 11 school days after) constituted a denial of FAPE, the parent's chosen out-of-state

residential placement was not appropriate. Thus, the parent is not entitled to tuition reimbursement for the student's placement there. Where the district held IEP team meetings in May and June of 2012, it did not convene a planned follow-up meeting to complete the IEP for the upcoming school year. During June and July, the parent and her attorney called and emailed the district to schedule the meeting but received no response and an IEP was not developed until 11 days after the school year began. While this procedural violation was not de minimis, it is important that the parent enrolled the student in the private school while the district still had 3 weeks to complete the IEP. Further, the parent's selection of an expensive, out-of-state residential program that lacked a therapeutic component and was not geared toward the student's learning and emotional needs and, therefore, was not appropriate for the student.

E. E.K. v. Warwick Sch. Dist., 62 IDELR 289 (E.D. Pa. 2014). School district cannot be held responsible for treating a student's long-term drug addiction, familial problems or delinquent behavior and, therefore, is not responsible for paying for her placement in a residential drug and alcohol treatment facility. The district's offered program included an IEP with organizational and behavioral goals, calling for the student to receive regularly scheduled counseling and social skills instruction. Further, the program's staff included a social worker, a psychologist, a job trainer, a nurse, and a private therapist—all of whom were trained to be aware of and intervene with any drug or alcohol issues. The district's program offers FAPE.

F. Suffield Bd. of Educ. v. L.Y., 62 IDELR 203 (D. Conn. 2014). Because the private school in which the parents placed the student did not provide math supports, speech-language services or interaction opportunities required by the student, parents could not recover the cost of the placement from the district, even though the proposed IEP did not include appropriate services to support the student's move from the private school back to the public school.

STAY-PUT

A. M.R. v. Ridley Sch. Dist., 62 IDELR 251, 744 F.3d 112 (3d Cir. 2014). The IDEA's stay-put provision applies through the final resolution of a case. While the 6th and D.C. Circuits have held that the stay-put obligations terminate at the end of a district court proceeding, the 9th Circuit has held that it applies through the end of the appeals process. Agreeing with the 9th Circuit, Congress intended stay-put to remain in effect though the final resolution of a dispute, as the statute's text is broadly written to encompass the pendency of "any proceedings" conducted, and narrowing the provision's scope to exclude the appellate process "strikes us an unnatural reading of such expansive language." Thus, the district must continue to fund a placement even if a district court later determines that their proposed IEPs were appropriate and the parent appeals on to Circuit Court.

B. R.R. v. Oakland Unif. Sch. Dist., 62 IDELR 290 (N.D. Cal. 2014). Although the current IEP for an autistic teenager provided for services two days per week in a separate day class, the district is to provide three days per week while the parents' appeal is pending.

This is so because the parties modified the student's current placement in August 2013 by increasing his SDC attendance to three days per week. While a student's stay-put placement is typically that identified in the most recent IEP, the parties here modified the stay-put by having him attend the SDC for three days per week and reducing his home instruction to two days per week. The purpose of the stay-put provision under the IDEA is to maintain the status quo until the parties resolve all disputes about a student's placement.

C. Eley v. District of Columbia, 63 IDELR 165 (D. D.C. 2014). Student's move to a proposed private school program from an internet-based private school setting would be a change of placement violating stay-put while appeal is pending. The district's argument that the term "educational placement" refers only to a student's IEP, and not to the physical location, is rejected in this case where "educational placement" could include both the services in the IEP and the physical location of those services. As such, the student is entitled to a stay-put order where the proposed private school program was notably different from his virtual school program, which was deemed appropriate in an earlier ruling. The district's own characterization of the two schools showed key differences in the programs where, unlike the virtual school, which lacked physical classrooms and access to peers, the private school featured on-campus learning. Clearly, shifting from what is essentially a completely individualized structured setting separate from other students to a more traditional school setting does constitute a change in the student's "then-current educational placement."

EXTENDED SCHOOL YEAR SERVICES

A. T.M. v. Cornwall Cent. Sch. Dist., 63 IDELR 31, 752 F.3d 145 (2d Cir. 2014). The LRE requirement applies to extended school year programs in the same manner as it applies to school year placements. ESY services are an essential program component for students who require year-round services to prevent substantial regression and the LRE requirement applies with the same force in the summer months as it does during the regular school year. Thus, districts must ensure that they have a range of educational settings available for ESY placements. If a district does not offer a mainstream ESY program, it can still make a continuum of ESY placements available by considering a private summer program or a mainstream ESY program offered by another public entity. Because the autistic child here made progress in his general education kindergarten class, the district erred in failing to make a mainstream ESY placement available. Thus, the district court's holding that the district was not obligated to offer a mainstream ESY placement is vacated and remanded for further proceedings.

LEAST RESTRICTIVE ENVIRONMENT

A. A.K. v. Gwinnett Co. Sch. Dist., 62 IDELR 253, 556 Fed. Appx. 790 (11th Cir. 2014). While home instruction is an available placement on the continuum of alternative placements, it is not the LRE for this 11 year-old autistic student. Her strict diet was not prescribed by a medical doctor, she does not have a life-threatening condition, and she is not under the regular care of a medical doctor. Further, the parents did not show that the district was unable to provide the nutritional supplements to the student during the school

day. Thus, the LRE for her is the public school SDC where should would have opportunities to interact with peers and to develop social skills.

B. Hannah L. v. Downingtown Area Sch. Dist., 64 IDELR 254 (E.D. Pa. 2014). In determining whether a school district can educate a student with a disability in a mainstream setting, the placement team must specifically consider whether it can meet the child's special education needs there with the use of supplementary aids and services. Here, the notice of proposed placement vaguely stated that the team rejected a general education placement with supplementary aids and services because it would not meet the student's need for specially designed instruction at this time. The team failed to document specific reasons underlying that decision, such as the types of supplementary aids and services that it considered and rejected, as well as an explanation of why they would not allow the student to make progress in her general education class. Thus, the court cannot hold that the district offered FAPE in the LRE to the student.

C. Anthony C. v. Department of Educ., 62 IDELR 257 (D. Haw. 2014). The district's proposed public school placement is the autistic high-schooler's LRE where the team discussed the student's possible functional, social, behavioral and academic difficulties if he attended the program in the public high school. While the parents had legitimate concerns that the student's behaviors might interfere with his success at the high school, the district considered the potentially harmful effects of the placement and the IEP team spent a significant portion of the LRE discussion weighing the benefits of a public school placement against the potential harms. In addition, the team discussed ways to mitigate any of the potential difficulties and, while the parents may not be pleased with how the team considered these potential harmful effects, their argument that they were not considered is rejected. Importantly, the IEP team also intended to develop a transition plan to ease the student's move from the private school where he had been for the previous 10 years. In addition, the team discussed a variety of possible placement options before deciding to recommend the public school placement with limited mainstreaming. Thus, predetermination did not occur.

D. C.L. v. Lucia Mar Unif. Sch. Dist., 62 IDELR 202 (C.D. Cal. 2014). Proposed separate day class for large and aggressive autistic student is upheld as the student's LRE. The proposed IEP included a detailed description of the student's present levels of performance, including his behavioral difficulties, and set out an array of goals, including especially detailed goals concerning his behavior, his difficulties with compliance, attentiveness, aggression and toleration of frustration. The IEP also provided OT, speech therapy, a one-to-one aide, supervision by an autism behavior specialist and consultation with a nonpublic agency. Based on the thoroughness of the IEP, the testimony of the behavioral specialist and the FBA evaluator's recommendations, the ALJ did not err in finding that the IEP offered the student FAPE. Further, the IEP's requirement that the student spend 45 percent of his day in a special day class and 55 percent in a general education setting complied with the Act's LRE requirement where the student's behavioral difficulties showed that additional time in a general education setting would not have benefited him and would have extended his disruptive impact on classmates and teachers.

E. Bookout v. Bellflower Unif. Sch. Dist., 63 IDELR 4 (C.D. Cal. 2014). Where autistic child received significant academic and nonacademic benefits from his general education kindergarten program, the general education classroom was his LRE, not a special day class. While a district may consider a child's effect on teachers and classmates when determining placement, the evidence here shows that the district did not give general education teachers the support they needed to address disability-related behavior problems. Instead, the district intentionally rotated students with disabilities through different classrooms to ensure that no general education teacher had an inclusion class for two years in a row. In addition, general education teachers were not provided with any training in the education of students with disabilities. The child's behavioral and social skills improved significantly with exposure to nondisabled peers; thus, the SDC placement is far too restrictive.

RESOLUTION MEETINGS

A. J.Y. v. Dothan City Bd. of Educ., 63 IDELR 33 (M.D. Ala. 2014). Where districts are required to have someone in attendance at a resolution session with "decision-making authority," the Superintendent did not where the board of education was required to ratify or approve any settlement agreement at a later date. Superintendents and other administrators satisfy the IDEA's requirement only if they actually have the authority, by express delegation or otherwise, to decide what a district will or will not do to resolve a due process complaint. However, because the parents and the district never reached an agreement at the resolution session in this case, this procedural violation was not a denial of FAPE.

ATTORNEYS' FEES

A. A.L. v. Jackson Co. Sch. Bd., 63 IDELR 168 (N.D. Fla. 2014). Magistrate's recommendation that parent attorney pay district $6,000 in attorney's fees is adopted where parent attorney brought the same argument in this case that she had made before the 11th Circuit that was rejected. This sanction appropriately balances the attorney's personal involvement in the earlier case with her lack of intent to harm the district where she had offered to pay the district $3,017 as a sanction when the district could recover a maximum of $8,125 in fees. The magistrate observed that the attorney's decision to file amounted to more than negligence, since she knew firsthand from her involvement in the prior case that a parent has no legal grounds for seeking IEP modification when due process is pending. Further, the magistrate pointed out that the attorney appeared to have a pattern of raising unsupported arguments. However, it was also noted that the attorney did not act with intent to harm the client and, as a sole practitioner, she would be responsible for paying the full amount of any sanction. Weighing all the factors, this places the attorney's behavior on the middle end of the scale and $6,000 is just slightly higher than the average of the amount the attorney offered to pay and the maximum amount available.

B. Capital City Pub. Charter Sch. v. Gambale, 63 IDELR 6 (D. D.C. 2014). Where the parent attorney was well aware of the charter school's efforts to arrange for a residential placement for a high schooler at the time she filed the due process complaint, her

allegations of unreasonable delay on the part of the school were "breath-taking." The charter school satisfied the standard for recovering fees against the parent because the parent's case was frivolous, unreasonable and without foundation. Although the due process complaint alleged that the school took four months to arrange for the placement, emails reflected that the parent never contacted the school to discuss placement and, instead, contacted the private day school the student was attending under an IEP developed by the charter school. The charter school learned of the parent's request for residential placement just days before a scheduled IEP meeting, which was rescheduled after the parent's last-minute cancellation. "[I]f anyone were responsible for delaying [the student's] placement in a residential treatment facility, it was [the attorney] and the parent." Thus, the charter school's request for fees is granted and the attorney must pay the school $11,767.

C. M.M. v. Plano Indep. Sch. Dist., 63 IDELR 49 (E.D. Tex. 2014). Where the parent's attorney acted with an improper purpose when she redacted language from a settlement agreement that explicitly disclaimed her clients' right to legal fees, she is required to pay the district's legal fees to defend the parents' challenge to a magistrate judge's report and recommendation. The attorney did not tell the magistrate judge about the settlement agreement, which the parties reached four months before the magistrate issued his report and recommendation on the parents' fee petition. More importantly, the attorney redacted critical information from the copy of the settlement agreement that she submitted for the court's review. This redacted provision specifically stated that the agreement did not confer prevailing party status on either party and could not be used as the basis of a claim for fees. Here, the attorney's conduct wasted the parties' time, as well as scare judicial resources. The parent attorney had no legitimate reason for failing to disclose the settlement to the magistrate judge or for redacting the limiting language from it. Thus, the district's motion for sanctions against the attorney is granted.

D. L.R. v. Hollister Sch. Dist., 63 IDELR 8 (N.D. Cal. 2014). Parents were not justified in refusing the district's settlement offer and, therefore, could only recover fees incurred through the date of the settlement offer (which decreases their award by over $50,000). In addition, due to their limited success at the hearing, their fees will be further reduced by 50%. Here, the district's offer revealed its willingness to hold subsequent, procedurally correct, IEP meetings after it had held two meetings without inviting a regular education teacher. The settlement offer addressed the district's past procedural violations and included 75 hours of compensatory education and reasonable fees, which was far more reasonable than the 46 hours of social skills training awarded by the ALJ.

E. Brighthaupt v. Dist. of Columbia, 63 IDELR 65 (D. D.C. 2014). Parent was justified in rejecting district's offer of only $300 in attorneys' fees to settle her FAPE complaint. The parent's attorney, who had practiced exclusively in special education law since 1997 and had represented parents in more than 1,600 proceedings, had worked 15.4 hours on the case at the time the district offered to settle. The offer of $300 "was so low that it could only be considered an insincere offer." Thus, the district is to pay the parent $24,196 in fees.

F. Board of Educ. of Evanston Skokie Comm. Consol. Sch. Dist., 63 IDELR 191 (N.D. Ill. 2014). While fee awards may not include the time an attorney spends preparing for or attending a resolution session, the district's argument that mediation is equivalent to the resolution session for fee-shifting purposes is rejected. IDEA defines a resolution session as a preliminary meeting to be held within 15 days of receiving notice of a parents' complaint for due process. Here, the mediation occurred approximately 15 months after the hearing request. Had Congress intended to exclude preparing for and attending mediation meetings from fee awards, it could have stated so explicitly in the IDEA.

G. Law Offices of David J. Berney v. School Dist. of Philadelphia, 63 IDELR 261 (E.D. Pa. 2014). Based upon the similarities between the complaint that a special education attorney filed in connection with this IDEA action and the complaints he submitted in three nearly identical cases are the basis for reducing attorneys' fees. The time spent on each task is reduced by 25%, as such was excessive.

H. Shanea S. v. School Dist. of Philadelphia, 63 IDELR 161 (E.D. Pa. 2014). The very real possibility that the district would be required to lay off hundreds of teachers, increase class sizes, sell several buildings and borrow millions of dollars just to meet its day-to-day financial obligations will not affect the court's decision to award fees in connection with two IDEA actions in an amount of $42,418. District courts within this Circuit have rejected the notion that a district's financial hardship should result in reduced fee awards for prevailing parents.

I. Snell v. North Thurston Sch. Dist., 63 IDELR 127 (W.D. Wash. 2014). Although several entries in the parent attorneys' billing log were argued by the district to be excessive or unreasonable, the full amount of the parent's requested fee award of $184,833 is granted. The district has not demonstrated that the hours spent by the attorney were "unproductive or otherwise excessive."

SERVICE ANIMALS

A. E.F. v. Napoleon Comm'y Schs., 62 IDELR 201 (E.D. Mich. 2014). Parents' 504/ADA case alleging discrimination on the part of the school district is dismissed where they have not first exhausted their administrative remedies under the IDEA. This is so because the service dog's presence at school would, at least partially, implicate issues related to the student's IEP and it appears conceivable that the IEP would undergo some modification. For example, there would need to be some accommodation for the concerns of allergic students and teachers and to diminish the distractions that the dog's presence would have. Moreover, having the dog accompany the student to recess, lunch, computer lab and the library would likewise require changes to the IEP. "Again, by way of example, the IEP would need to include plans for handling Wonder on the playground or in the lunchroom. Defendants (i.e., the school and school district) would also have to make certain practical arrangements—such as developing a plan for Wonder's care, including supervision, feeding, and toileting—so that the school continued to maintain functionality." Since all of these things "undoubtedly" implicate the student's IEP and

would be best dealt with through the administrative process, the IDEA's due process procedures must first be exhausted.

SECTION 504/ADA GENERALLY

A. CTL v. Ashland Sch. Dist., 62 IDELR 252 (7th Cir. 2014). Where the district failed to train at least three staff members on the first-graders diabetes equipment as stated in the 504 Plan, that did not amount to a failure to accommodate the child's disability under Section 504. The school nurse's monitoring of the blood glucose levels afforded the child access to the district's programs and services. Where the 5th, 8th and 9th Circuits apply a materiality standard to IEP implementation failures and the 504 standard for FAPE focuses on a student's meaningful access to public school programs, the district's failure to implement the 504 Plan is not disability discrimination unless the deviation from the Plan was so significant that it effectively denies the child the benefit of public education. The district's decision to hold two widely attended training sessions for all staff as opposed to training specific staff members did not prevent the student from accessing district programs.

B. D.F. v. Leon Co. Sch. Bd., 62 IDELR 167 (N.D. Fla. 2014). Parent's decision to withdraw consent for IDEA services when the school district offered her middle schooler with a hearing impairment placement in a special one-hour class each day for students with disabilities does not preclude her from challenging the district's refusal to provide assistive technology under Section 504. The parent's rejection of IDEA services has no bearing on the student's right to assistive technology under Section 504 and the ADA where the parent expressly requested services under 504 at the time she revoked her consent for IDEA services. As such, the parent did not waive her right to services that might be available under other statutes. "The import is clear: a parent's refusal to consent to a more-comprehensive plan that includes a one-hour class for students with disabilities does not necessarily authorize a school district to refuse to provide technology to help a student hear in other classes." The district's alleged refusal to provide assistive technology could amount to disability discrimination.

C. S.L. v. Downey Unif. Sch. Dist., 63 IDELR 15 (C.D. Cal. 2014). Where the district had determined on multiple occasions that the student with a seizure disorder was not eligible for services under the IDEA, student is not required to exhaust IDEA's administrative remedies prior to bringing her lawsuit under Section 504/ADA. The student did not require instructional modifications; nor was she seeking specialized instruction. Rather, the student alleged here that her academic performance suffered because the district failed to reasonably accommodate her seizures. Thus, she is not required to exhaust under the IDEA prior to bringing her claims.