The Special Educator®

News & Analysis of Events Important to Special Educators

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Pause before answering parent's specific methodology requests for dyslexia

NEW ORLEANS — When parents request a specific methodology to address their child's dyslexia, teams can have a variety of reactions. Staff could be defensive and immediately shut down the request, or they may acquiesce to the request outright. But what should the district do to remain legally compliant and serve the student?

They should investigate. While the IDEA doesn't require districts to name a specific methodology in a student's IEP, when parents request one for their children, teams should wait before giving any answer. They should seek to understand where the parent's request is coming from. With an analysis of the student's progress, the team can make a recommendation based on data and individual needs. Implementing a methodology not based on data and a student's individual needs could result in a denial of FAPE. *See West Platte County R-II Sch. Dist.*, 104 LRP 15903 (SEA MO 04/06/04).

"When districts make recommendations that are inconsistent with private provider recommendations, they need to have their own data that they're relying on. They need a sound reason supported by data that supports the district's recommendations, especially when it's different from a private provider recommendation," said Cassie Black, school attorney at Kriha Boucek LLC in Oakbrook Terrace, Ill.

With Black, Anne Bowers, director of special education at Woodridge School District 68 in Illinois, shared a four-step framework that districts can follow when parents request specific methodologies for students with dyslexia at LRP's 44th National Institute on Legal Issues of Educating Individuals with Disabilities.

Don't be taken by surprise

Districts should prepare staff for methodology requests that come out of the blue during IEP meetings. Part of that planning is finding immediate responses that staff can give to parents, said Bowers. For example, include phrases like "Tell me more," or "We'll want to do more research on that," said Bowers. These responses don't shut down the conversation but allow the parent to feel heard.

Also, districts should emphasize "the importance of not rushing to an immediate defense of what you're doing without understanding and also not jumping in and saying yes to everything," Bowers said.

Bowers said that these requests for specific methodologies sometimes come from parents wanting to feel like they're bringing something to the table. If they don't know the progress that their child is making, they'll

(See **PAUSE** on page 1)

Is child who hits, bites, topples furniture substantially likely to injure others in current placement?

An elementary school student in a Pennsylvania district had a rare genetic disorder that caused him to engage in dangerous behaviors. The student regularly eloped; threw objects; toppled furniture; and hit, kicked, and bit other students and staff.

The district compiled a behavioral analysis report that concluded that some IEP provisions addressing the behavior were not being implemented with fidelity. It also concluded that the student was more likely to engage in dangerous behaviors when staff didn't implement those provisions.

The district filed a due process complaint seeking to remove the student to an interim alternative educational setting. It contended that maintaining the student in his neighborhood school was substantially likely to result in injury.

Under the IDEA, if a district establishes that maintaining a student's current placement is substantially likely to result in injury to the student or to others, an impartial hearing officer may order the student's removal to an appropriate IAES for up to 45 school days. 34 CFR 300.532(b)(2)(ii).

May hearing officer remove child to IAES?

A. Yes. The student's behaviors, such as toppling furniture, were very likely to injure himself or someone else.

B. No. The district wasn't implementing the IEP provisions that would have reduced the behaviors.

C. No. The district failed to show the student was likely to inflict serious bodily injury.

How the IHO found: B.

Given the district's implementation failures, the district didn't establish that maintaining the student's placement was likely to result in injury. *Council Rock Sch. Dist.*, 123 LRP 6125 (SEA PA 12/14/22).

The IHO pointed out that the evidence established the district wasn't implementing provisions in the IEP that were designed to reduce the student's behaviors. The IHO explained that "placement" under the IDEA is more than a location; it is also the sum of the student's special education services and supports. Because the district wasn't implementing the student's placement, the IHO found, the district couldn't establish that continuing with that placement was likely to result in injury.

"[T]he District cannot fail to implement the Student's IEP and then use that failure to support a claim that the Student must be removed," the IHO wrote.

The IHO denied the district's request to place the child in an IAES.

A is incorrect. While this was probably true, the district first had to show that it was implementing the student's placement in accordance with the IEP. Only then could it establish that maintaining that placement was substantially likely to result in injury.

C is incorrect. The IDEA regulation at 34 CFR 300.532(b)(2)(ii) doesn't require the district to show that the expected injury will constitute "serious bodily injury."

Editor's note: This feature is not intended as instructional material or to replace legal advice. ■

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PAUSE (continued from page 1)

start to research on their own and bring in solutions, she said. "Sometimes it stems from that lack of communication from the onset where we're not giving the parent enough information to show the progress the student is making," Bowers explained.

Understand parents' requests

When teams are caught off guard by a parent's requesting a specific methodology, such as the Orton-Gillingham approach, they should seek more information before granting or denying the request. This can include getting consent to speak with the student's private tutor if necessary to understand what the parent would like to see that is not currently happening in the student's program, said Black.

Consult "anybody else who may have some of that information to help the district better understand the request and learn about the requested program," Black said.

One thing teams want to avoid is immediately shutting down parent requests, said Bowers. That could be considered predetermination. Teams need to take into account the individualized nature of the IEP and remember that they don't have to give an answer right then, Bowers said.

"It's not something that right away there's an immediate answer you have to give. It's about understanding all these pieces, taking a step back to understand their needs and progress," Bowers said.

Analyze student's current reading program

An IEP team should take a parent's requested methodology for dyslexia and hold it up against what's currently in place for the student, Black said. Examining the student's current reading program, its alignment with best practices, and the student's progress helps teams understand if it is meeting the student's needs, she said.

Look at progress on IEP goals, additional assessment data, embedded reading assessments, and current classroom performance to measure student progress and assess what's currently happening for the student, Black said. If the team finds gaps in the student's success, then it needs to address those.

"We need to consider what we're doing for the student and what the options are for addressing those gaps, which should include consideration of the parent's request for specific methodology as well," she said.

Respond with data to support decision

Within the context of the IEP meeting, the team will analyze student progress and the current programming in place for the student. Then, the team will make a decision that is student-centered and focused on providing the student with FAPE, Black said.

"It's a legally defensible decision in terms of knowing what we're doing, and whatever decision we make needs to be based on appropriate data and on the student's current progress; it must be individualized," Black said.

Parents, as key members of the IEP team, should be involved in this meeting as well. As a best practice, districts should send this information to parents in advance of the meeting so they can meaningfully participate, Black said.

Implement program, keep up communication

When the team has determined what is most appropriate for the student, it should continue to monitor the student's progress and be open to reconvening to make adjustments if the student is not making appropriate progress based on data, Black said.

Equally important is that districts are communicating with parents on a consistent basis about student progress, Bowers said. This allows them to have a sense of how their child is doing and not feeling a responsibility to bring methodology requests.

"We don't want to have an open invitation for parents to feel responsible for bringing [them] to the table, but we want them to feel like they're a partner because they know how their child is doing," she said. ■

Unplug student anxiety linked to excessive device use

When a student with a disability fears logging off social media at 2 a.m. more than failing a math test the next day, she may need intervention. This is especially true if the student has social anxiety when she is face-to-face with peers.

"Students with difficulties with social interaction are considered to be the most at risk," said Ray W. Christner, president, and chief executive officer at Cognitive Health Solutions LLC in Hanover and York, Pa. "It tends to be students who are socially having a difficult time. The device becomes their outlet. Some people see it as an addiction although it's not diagnostically identified."

Students with anxiety tied to their use of mobile devices need support from school psychologists and teachers. This prevents students from becoming so focused on the devices that it impedes their learning and ability to build healthy social connections. Otherwise, students may struggle to make progress toward their IEP goals and develop emotional disturbances

over time that require more intensive services. School psychologists can help teachers and students reduce anxiety related to using devices in several ways.

Reduce access to mobile devices

Have teachers ask students to put away their cellphones during instructional time, Christner said. Have them reassure students that they can check their phones after the period. Also, have them limit their use of other devices during learning.

"This doesn't mean they can't have devices accessible, but have boundaries," he said. "Students need to have that human connection. Teachers should have classroom discussions and get kids to put down their laptops and tablets for a little bit to work on group projects. They shouldn't be relying on everybody individually submitting something [online]."

Also, ask teachers to reduce the amount of time students have to be on their devices at home, Christner said. They shouldn't always be required to use them to complete homework.

"We're part of the problem because we make kids rely on their devices," he said.

Address unstructured time

Suggest students help each other stay off their devices when they can be connecting in person, Christner said. For example, suggest students put their devices face-down in the middle of the table during lunch so they are not tempted to look at them when they could be looking at and connecting with each other.

"They can talk about videos they watched online, but they can't watch them," he said. "It's just 20 minutes. It's a good exercise to support each other."

Model appropriate usage

Ensure you, teachers, and other colleagues model appropriate usage of devices for students, Christner said. For example, don't hide behind your device every time students are taking a test. Don't spend the entire lunch period on your phone.

"Share how you use devices in a way that keeps you healthy," he said. "Everything in excess is unhealthy. If you go to the gym too much, it may cause you health problems."

Set goals

Help students set goals for reducing their device use, Christner said. For instance, see if a student can go without having the phone on for an hour each day or without having the phone in bed with her. Or have a student work toward less texting and more face-to-face activities with friends.

"They can change their lifestyle to manage their use," he said.

Just recognize that students may need support for the anxiety they feel at the beginning of reducing their use of devices. They may need to use coping tools and strategies as they would with other sources of anxiety.

Adjust student thinking about device use

Help students understand perceptions of their device use through cognitive behavior therapy, Christner said. For example, students may have anxiety because they think they will be bullied or miss out on something because they are not using their devices.

"They may think, 'If I don't respond quickly, my friends are going to think I don't care about them,'" he said. "Try to get them to pay attention to why they feel they need to have the device. They need to find the function of it."

Help them slowly work on engaging in different activities by moving them away from using their device and using coping skills to work through their anxiety related to not using their device. ■

5 facts every educator should know about Section 1983

If you work in special education, there's a good chance you've seen at least a few references to "Section 1983" — the provision of the Civil Rights Act found at 42 USC 1983. But what does this law do? Is it something individual educators need to worry about? Are there steps administrators can take to protect their districts from liability? Here are five facts every educator should know about this provision of the law.

1. Section 1983 is a vehicle for constitutional claims.

Unlike the IDEA, Section 504, and the ADA, Section 1983 does not impose any obligations on school districts. Rather, it makes government employees (including school personnel) liable for any constitutional violations they commit while performing their job duties. This means that districts and educators can't "violate" Section 1983 itself. When parents file a claim under 42 USC 1983 against a district or its employees, they're using the federal statute as a vehicle to seek money damages for violations of their children's federally guaranteed or constitutional rights.

So which Section 1983 claims are most common? In the special education context, parents often seek relief for alleged violations of:

- The First Amendment, which protects a parent's

right to advocate on her child's behalf.

- The Fourth Amendment, which protects U.S. citizens from "unreasonable searches and seizures."
- The 14th Amendment, which protects a student's right to bodily integrity and mandates equal treatment under the law.

Although Section 1983 also applies to violations of rights guaranteed by federal law, many Circuit Courts have held that parents may not pursue Section 1983 claims based on IDEA violations.

2. Parents can sue school employees and districts.

Another big difference between Section 1983 and federal disability laws is the ability to sue individual employees. Under 42 USC 1983, any *person* who deprives a U.S. citizen of any rights, privileges, or immunities secured by the U.S. Constitution or federal law while acting "under color" of state law will be liable for any resulting injuries. In other words, parents can sue school district personnel for alleged violations of their children's federal or constitutional rights that occurred while the employees were performing their regular duties as educators.

Suppose, for example, that a 5-year-old boy with cerebral palsy needs a special car seat with a harness to ride the school bus safely. If the driver and the bus aide fail to check the bus thoroughly at the end of their shift and leave the child strapped in the seat for several hours, the parents might sue the employees under Section 1983 for alleged violations of the child's Fourth Amendment right against unreasonable seizure.

3. Districts are not exempt from liability.

Although Section 1983 refers to "any person" who violates the constitutional rights of others, parents may be able to hold districts responsible for educators' misconduct in some instances. This generally occurs when parents show that the alleged violation of the student's constitutional rights stemmed from a district custom, practice, or policy, such as a failure to train or supervise. In the example above, the district might be liable for any injuries the child suffered due to being left on the bus if it knew that transportation personnel were not following end-of-shift procedures and failed to take action.

4. Claims often involve allegations of physical force.

A large percentage of Section 1983 claims result from an educator's use of physical force on a student with a disability. This could include grabbing or restraining the student to prevent injury, which might be justifiable in some instances, to hitting, kicking, and other forms of physical abuse. Teachers, paraprofessionals, and other personnel can minimize their potential liability for constitutional violations by refraining from using physical force and documenting any emergency use of restraint.

5. Staff training may help avoid Section 1983 claims.

Training doesn't just protect districts from potential liability for alleged constitutional violations caused by their customs, practices, or policies; it also helps educators recognize and avoid conduct that can give rise to a Section 1983 claim. This benefits the district, the educators, and the students. Districts should document all training sessions, including the dates and the names of attendees, and retain copies of any training materials used. ■

Assume disability exists for MDR of student still being evaluated for special education

When students in the middle of being evaluated for special education engage in code of conduct violations, should they be disciplined like every other student in the school? Or are they entitled to discipline protections afforded by the IDEA? They are entitled to manifestation determination reviews under the IDEA even if they have not yet been found eligible for special education and related services.

"Some districts ask if they can wait to hold the [MDR] until after a decision is made on eligibility," said Eric Herlan, an attorney at Drummond Woodsum in Portland, Maine. "They should not, and I expect a hearing officer would find that in violation of the timeline required under federal law for an [MDR]. The law says we have to do an MDR for a student who has not yet been identified. Waiting would be a risky approach to take."

If an IEP team is in the middle of evaluating a student who is suspected of having a disability when she engages in misconduct, the district should conduct an MDR just as if the student has already been found eligible for special education. Otherwise, the student may receive inappropriate discipline and miss out on necessary behavioral supports. Herlan explains how teams can approach an MDR for a student not yet eligible for special education.

Discuss suspected areas of disability

Consider what suspected areas of disability you plan to assess during the student's special education evaluation and how they may manifest, Herlan said. For example, if you plan to assess three suspected areas of disability, look at how those three areas would manifest if, ultimately, the student were to be found to have them.

"You ask the team to engage in a hypothetical eligibility decision," Herlan said. "The team would not

make an eligibility decision at the manifestation meeting. We are not saying the child has an other health impairment — we'll find out later — but in this scenario, [these] are the suspected areas we're evaluating. We're going to use those suspected areas to guide the manifestation determination."

Weigh private diagnoses

Even if you haven't gotten far into a special education evaluation, the district may have medical diagnoses that can shed some light on a potential disability if the parents have had their child evaluated by a private provider, Herlan said. For example, a doctor may have diagnosed a student with PTSD and ADHD. There may not be much dispute that this is true, so the team can consider whether the student's conduct was a manifestation of these diagnoses even if the special education eligibility determination isn't complete yet.

"If three weeks later, it turns out that the student doesn't have those disabilities, it opens up the possibility of discipline for the earlier incident," he said.

Address behavioral issues

Regardless of where the district is in the eligibility determination process, it should consider developing a behavioral intervention plan for the student if it appears his behavior is a manifestation of a suspected disability, Herlan said. "I would want to develop a behavior plan for the student to address the misbehavior," he said. "I think a hearing officer would say if we found it to be a manifestation of a suspected disability, we have a duty to do that behavior plan work, even though later it might come out that the student isn't eligible. Then, if the student is found not eligible, all bets are off. We wouldn't have to continue that."

Ensure parents understand the process

Parents may not automatically understand that their child has IDEA disciplinary protections before his eligibility determination, Herlan said. They may mistakenly think the MDR is to determine if their child engaged in inappropriate conduct in the first place. Make sure they understand that that is not the point of an MDR. "Tell them, 'I know you don't agree that this happened, but let's pretend for a moment that it did,'" he said. "'If it did, would it have been a manifestation? I'm not asking you to commit to the fact that it happened. I'm asking you to participate in this hypothetical.'" ■

Put military families at ease about accessing records from previous school

Military families may have little notice before they are expected to move from a Department of Defense Education Activity school to a school district near a military base. Some may inadvertently pack their child's IEP and other education records away in boxes that might not arrive until several months after a student is expected to be settled at a new school. Others may bring incomplete or outdated records with them and expect the new district to pick up the pieces. Still, other military families may not bring anything at all.

The typical student from a military family changed schools six to nine times between kindergarten and high school graduation, a 2020 survey showed. Missing records for enrollment of former DoDEA students are not uncommon. "That seems to come up a lot simply because of the transient nature of the military population," said Tammy Somogye, a school attorney at Lathrop GPM LLP in Overland Park, Kan. Somogye often works on cases involving school districts and military families.

It's important your staff members know what to do if they encounter a student in a military family that provides incomplete, outdated, or no records from a DoDEA school and aims to continue receiving special education and related services in your district. If the district doesn't make an effort to access and help parents retrieve a student's education records, it could deny a student necessary services and block parents' meaningful participation in the IEP process. Give attention to these guidelines to ensure staff and parents can timely access education records of students with disabilities in military families.

Know military families' rights

Under the Interstate Compact on Educational Opportunity for Military Children, which all 50 states and the District of Columbia follow, students who are part of a military family are allowed to enroll in a school district even if their official education records haven't arrived from their prior school yet, Somogye said. Typically, a student's school will have already sent the records to the receiving school district by the time the student arrives, but parents can provide an unofficial copy of the records to get enrollment started.

Parents and districts can request documents from a previous DoDEA school the student attended similarly to how they would from a school district, filling out whatever form the school or district requires.

Recognize parents may impede, limit access

Parents may not want you to access their child's education records from their previous school, Somogye said.

"Sometimes parents don't want the new school to have their child's records or they're very selective about the records they want them to have," she said. "They either don't agree with the IEP that the previous school had in place, or they want something different. They may want something more."

For example, a student's school may have allowed a private nurse to come to school with the student, Somogye said. The new district may say that its nurse can serve the student, but the parents push for that private nurse. If the private nurse did not appear on the student's previous IEP, the new district would not have to provide that service, she said.

"If the new school has folks who can serve the same purpose as the private nurse, they're not obligated to allow a private nurse to come to their school with the student," Somogye said.

The new district may consider evaluating the student to determine if a service is needed based on the student's previous IEP, Somogye said. "It may not be on that IEP for a reason," she said.

Be clear when offering interim services

Document any additional services offered during the evaluation process to address parents' concerns and determine need, Somogye said.

"You want to approximate services, but you want to be careful not to make them stay-put," she said. "You're doing it to gather data with respect to need as part of the evaluation." ■

Proposed Part B amendment streamlines access to Medicaid, insurance benefits

ED is considering a change to IDEA Part B regulations that would make it easier for districts to access public benefits or insurance to pay for special education services.

On May 18, ED announced that it's seeking comments on its proposed modification to 34 CFR 300.154(d)(2). The current regulation requires a district to obtain parental consent and provide written notification before accessing a student's or a parent's public benefits or insurance for the first time. Under the proposed regulation, the district would only need to provide written notification to the parents before accessing public benefits or insurance for the first time and annually thereafter.

According to ED, several commenters to the 2013 Part B amendments requested the removal of the consent requirement "to reduce administrative burden and increase access to Medicaid reimbursement" for IDEA services. Although the Part B regulations refer to public benefits and insurance generally, ED cited Medicaid and the Children's Health Insurance Program as examples.

ED last updated the Part B regulations in 2017 to align with changes brought about by the Every Student Succeeds Act of 2015. It updated the regulation governing districts' access to public benefits and insurance in 2013.

'At no cost' provision

ED does not appear to be seeking feedback on its proposed elimination of the parental consent requirement. Rather, ED is asking whether the written notification to parents should include a statement that the district has an obligation to provide FAPE "at no cost" to the parents.

Under the current Part B regulations, the written notification must include several statements to this effect. For example, the district must inform the parents that it cannot require them to sign up for or enroll in public benefits or insurance programs for the child to receive FAPE. 34 CFR 300.154(d)(2)(i).

ED said its draft version of the proposed regulation retains the current "at no cost" provisions. Still, ED seems to be questioning whether that language is necessary. ED suggested three options:

1. Include the "at no cost" provision in the written notification prior to accessing public benefits or insurance for the first time and annually thereafter.

2. Require the written notification to include the "at no cost" provisions only before the district accesses public benefits or insurance for the first time.

3. Eliminate the requirement that the written notification includes the "at no cost" provisions.

ED will accept comments through Aug. 1, 2023. Interested parties may submit comments online using the Federal eRulemaking Portal at *www.regulations.gov* and Docket ID ED-2023-OSERS-0052. Individuals who need accommodations or otherwise have difficulty submitting comments through the portal should contact ED for assistance. ■

Use 'variety pack' assessment approach to determine adverse educational impact

When a district receives a referral for special education services for a student with difficulties in expressive language or vocabulary, it needs to gather information about whether the student has a language disability and how it impacts education. 34 CFR 300.308. For many school teams, the former question is easier to answer than the latter. But your evaluation team can find robust data to answer the question of educational impact if it knows the right mix of language assessment tools to employ.

For students with inconclusive performances on standard district measures, your team will need to start by requesting permission for formal evaluations. 34 CFR 300.300. Evaluations should be requested after a precise list of concerns is documented. Then, your evaluation team, including the team speech-language pathologist, will need to collect data to capture the student's communication and educational profile.

In addition to an educational evaluation and other required components for special education eligibility, the district team should utilize various communication testing tools rather than relying on a single language instrument. Having the right mix of communication assessment tools can be the difference between making a carefully considered eligibility decision and a rushed call that could open your district up to legal trouble. Adverse educational impact is about more than just low grades, so your team's approach to communication assessment should include qualitative and quantitative measures of impact.

Varied tools will allow your team to better document the ways any negative educational impact may or may not manifest from communication deficits. Aspects such as safety, social engagement, participation in instruction, and daily routines are all important to examine, as are the student's ability to be understood by peers and adults, to follow classroom directions, and to demonstrate the social-emotional regulation needed for learning.

All these elements of educational impact should be scrutinized because a child's ability to access instruction, demonstrate knowledge, navigate the school environment, interact with peers, and stay safe are important when meeting the expectations of a school day. If your team examines communication in these instances and finds no adverse educational impact, you can show that you have used evaluation data to demonstrate due diligence when making the eligibility decision.

The following communication assessment tools can be used in conjunction with standardized language testing to give your evaluation team additional details about the presence, or lack thereof, of an adverse educational impact.

Wh- question stem inventory

This is a great tool to ensure that students understand the pattern of wh- question stems and can answer questions appropriately. This tool will examine whether the student understands that the referent in his answer should match the question stem provided.

For example, a student should use locations in response to a "where" question stem. Clarifying whether a student understands these patterns can provide essential data to drive eligibility decisions under the IDEA. A student who doesn't have these skills might have difficulty answering academic questions and sharing important safety details, such as telling his teacher about an injury sustained on the playground.

Narrative assessment

While some standardized tests for narration and story grammar skills exist, if your team doesn't have this information, adding qualitative assessment for narration could be needed. Testing these skills can give your evaluation team information about whether a student can retell events. Trouble in this area can impact a child's ability to meet reading comprehension standards and could manifest socially.

Teacher input surveys

Standardized receptive and expressive language testing can give your district team tons of information about a student's skills in a one-on-one setting. However, the team may be better able to understand how the student generalizes language skills to the classroom if a teacher input survey is included in the assessment battery. This tool allows for a fuller picture of a student's communication skills and provides evidence regarding how language skills look in various environments.

Observations of communication

Observations are another great tool for collecting data on student performance in various settings. Observation settings should align with times when the student would be expected to do activities related to the concerns documented during the initial referral. ■

Who can serve as Title IX coordinator?

Your district must designate at least one employee to serve as the Title IX coordinator, the person to coordinate its efforts to comply with, and carry out, its responsibilities under Title IX. 34 CFR 106.8(a). Districts must provide the Title IX coordinator's contact information to students, staff, and parents. 34 CFR 106.8(a). When choosing your district's Title IX coordinator, consider whether the candidate has these qualifications:

Title IX Coordinator Checklist	
Check that candidate meets requirement	**Qualities potential Title IX coordinator must have**
❑	The employee understands and is ready to undertake the major responsibility of Title IX compliance efforts.
❑	The candidate is unbiased, impartial, and free from conflicts of interest.
❑	The staff member may also serve as the Section 504 coordinator, the affirmative action officer, or ADA officer.
❑	The employee must receive ongoing training on Title IX requirements, procedures, and compliance, as well as the role of coordinator.
❑	The prospective coordinator understands the role and that the responsibilities include investigating complaints communicated to the district alleging noncompliance with Title IX.
❑	The individual must be familiar with the tasks and responsibilities relating to the implementation and administration of the district's Title IX grievance process.
❑	The employee must possess the competencies and skills necessary for the effective administration of the grievance process and related activities, which include, but are not limited to: • In-depth knowledge of the Title IX regulation; • General knowledge of other federal and state non-discrimination laws; • Knowledge of the district's Title IX grievance procedures; • Knowledge of district personnel policies and practices; • Ability to prepare reports on the Title IX compliance activities and make recommendations for action by appropriate decision-makers; • Ability to communicate effectively; • Ability to diagnose, clarify, and mediate differences of opinion; and • Ability to establish a positive climate for Title IX compliance efforts ■

2e teen's solid grades, achievement of annual goals bolster proposed IEP

Case name: *A.B. v. Smith*, 83 IDELR 53 (4th Cir. 2023).

Ruling: The parents of an academically gifted teenager with specific learning disabilities and ADHD could not show that a Maryland district denied their son FAPE by placing him in a program designed for twice-exceptional students. The 4th U.S. Circuit Court of Appeals upheld a District Court decision at 81 IDELR 35 that the student's IEP was reasonably calculated to provide FAPE.

What it means: A district has no obligation to maximize an IDEA-eligible student's potential, even when the student is academically gifted. The key question is whether the proposed IEP addresses the student's unique strengths and needs. Here, the district noted that the IEPs provided the specialized instruction and supports the student needed while giving him opportunities to challenge himself in a general education setting. That evidence, along with the student's satisfactory progress, undermined the parents' request for a placement in a special education school. *Editor's note: Per court order, this decision has not been released for publication in official or permanent law reports.*

Summary: The fact that an academically gifted teenager with dysgraphia earned B's and C's during his final year in a Maryland district did not establish his need for a more restrictive placement. The 4th Circuit upheld a District Court's ruling at 81 IDELR 35 that the parents were not entitled to reimbursement for their son's unilateral placement in a private special education school. The three-judge panel explained that an IEP offers FAPE if it would enable the student to make progress that is appropriate in light of his circumstances. Although the parents argued that the student could not make appropriate progress in a program for gifted students with SLDs, the panel disagreed. The panel noted that the student met his IEP goals despite his failure to earn A's in any of his classes, two of which were advanced courses. Furthermore, the panel observed, the district relied on evaluative data about the student's relative strengths and weaknesses when developing his proposed IEP for the following school year. The panel acknowledged that the student earned A's, B's, and C's in his private school classes, none of which were advanced courses. Still, it rejected the parents' claim that the student's progress proved that the district's proposed IEPs were deficient. "An IEP need only be 'reasonable,' not 'ideal,'" the panel wrote in an unpublished decision. Given that the student attended mostly general education classes, earned average to above-average marks, and advanced from grade to grade, the 4th Circuit agreed with the District Court that the district offered the student FAPE. The 4th Circuit also upheld the District Court's denial of the parent's request to supplement the administrative record. The panel noted that the parents could have introduced the "additional" evidence during the due process hearing, but chose not to do so. ■

Nurse can't link principal's acts to her advocacy for children with diabetes

Case name: *Rae v. Woburn Pub. Schs.*, 83 IDELR 61 (D. Mass. 2023).

Ruling: A nurse for a middle school won't be able to proceed with her retaliation claim against a district and a school principal under Section 504 or Title II of the ADA. Holding that the nurse failed to establish a causal connection between her advocacy on behalf of students with diabetes and the principal's alleged adverse actions against her, the U.S. District Court, District of Massachusetts granted the district's motion to dismiss. The court also concluded that the nurse failed to state a claim for intentional infliction of emotional distress.

What it means: When defending against an employee's retaliation claim, a district should examine whether there's a causal link between the employee's advocacy on behalf of students with disabilities and the alleged adverse actions. If the district can show the adverse actions bore little relation to the conduct, it's likely to win the case. Here, the principal allegedly required the nurse to attend disciplinary hearings concerning a parent's complaint and a missing t-shirt, and unexpectedly participated in the nurse's yearly review. The district successfully argued these incidents were unrelated to the nurse's attempts to obtain more and better services for students with diabetes

Summary: Neither the disciplinary hearings a middle school nurse was required to attend nor her principal's unexpected participation in her yearly review was connected to her speaking out on behalf of students with diabetes. Because the nurse failed to establish that her protected advocacy caused the principal's alleged adverse actions, she did not articulate a plausible relation claim under Section 504 and the ADA against the principal and her Massachusetts district. The court explained that to establish a retaliation case, the nurse had to show: 1) she engaged in protected conduct; 2) she was subjected to an adverse action; and 3) there was a causal connection between the conduct and adverse action. The court acknowledged that the nurse engaged in protected activity when she sought more support for students with diabetes. As to the second element, the court indicated that it was skeptical but would assume that the principal's conduct, including an incident where the principal participated in her yearly review, constituted adverse action. Addressing the third element of the claim, the court held there was no evidence of a causal connection between the adverse action and nurse's advocacy. While the principal required the nurse to attend disciplinary hearings, those hearings "involved a parent complaint, a t-shirt that a student obtained from the nurse's office, and another instance where [the nurse] did not respond to a page over the school's public announcement system because she was outside," U.S. District Judge Allison D. Boroughs wrote. The court also found that the principal's involvement in the review was unconnected to her advocacy. Because she failed to state a viable claim, the court granted the district's request to dismiss the lawsuit. ■

Notice of 10th-grader's new diagnoses requires Ariz. district to evaluate

Case name: *JZ v. Catalina Foothills Sch. Dist.*, 83 IDELR 62 (D. Ariz. 2023).

Ruling: An Arizona district violated the IDEA not only by refusing to evaluate a 10th-grader newly diagnosed with depression and oppositional defiant disorder but also by failing to respond to the parents' request for an independent educational evaluation. The U.S. District Court, District of Arizona partially reversed an administrative decision at 121 LRP 5749 and ordered the district to pay $4,100 for the parents' IEE.

What it means: A district does not have to evaluate a student's need for IDEA services simply because the parents request an initial assessment. That said, a district should evaluate

if it learns of a new diagnosis or of a potential disability-related change in the student's educational needs. This district had already convened a Section 504 team meeting to discuss the student's refusal to use the accommodations offered for his ADHD. Given its knowledge of the student's ongoing difficulties, the district should have conducted an initial IDEA evaluation after learning of the student's mental health diagnoses.

Summary: Because a 10th-grader's parents informed an Arizona district that their son had been hospitalized twice for depression and suicidal ideation, the district erred in denying their request for a special education evaluation. The District Court reversed an administrative law judge's decision at 121 LRP 5749 that the district's denial of the parents' request complied with the IDEA. U.S. District Judge Raner C. Collins acknowledged that a district does not have to evaluate every student whose parent requests an IEP. However, the judge explained that a district must evaluate a student for a suspected disability when it has notice that the student is displaying signs or symptoms of a particular disability. In this case, the judge observed, the parents submitted a report from a clinical neuropsychologist that described the student's depression and ODD and their interaction with his earlier-diagnosed ADHD. Judge Collins determined that the new data supported the parents' request for an IDEA evaluation. "The district should have evaluated [the student] not merely because [the parents] asked for an evaluation, but because [the parents'] request, communication, and documentation put the district on notice that [the student] had received diagnoses for new suspected disabilities beyond his ADHD," the judge wrote. The judge also pointed out that the district did not include the parents in discussions about the need for an IDEA evaluation or share the students' recent diagnoses with the school study team. As such, the judge held that the district impeded the parents' participation in the IEP process. Judge Collins also held that the parents could recover the $4,100 cost of an IEE they obtained after the district refused to evaluate. Although the district maintained that the parents never requested an IEE, the judge explained that the parents' inquiries about their right to an IEE were sufficient. ■

School's inability to manage child's behaviors dooms reimbursement bid

Case name: *J.S. v. Autauga County Bd. of Educ.*, 83 IDELR 63 (M.D. Ala. 2023).

Ruling: An Alabama district will not have to reimburse the parents of a kindergartner with ADHD for the private school placement they arranged after a dispute over the child's least restrictive environment. The U.S. District Court, Middle District of Alabama upheld an impartial hearing officer's decision at 81 IDELR 118 to the extent it denied the parents' request for reimbursement.

What it means: A district's failure to provide a child FAPE will not necessarily require it to fund the child's unilateral private placement. The district may be able to avoid a reimbursement claim by showing that the private program failed to meet the child's disability-related needs. In this case, the district pointed out that the private school reduced the child's instruction to two hours of off-site tutoring each week based on its inability to manage the child's behaviors. By highlighting the reduced instructional time and the lack of occupational therapy services, the district convinced the court that the private placement was not appropriate.

Summary: The fact that a kindergartner with ADHD received just two hours of instruction each week after enrolling in a private school undercut his parents' request for tuition reimbursement. Determining that the unilateral placement was not appropriate, the District Court upheld an IHO's decision at 81 IDELR 118 that the child's Alabama district was not responsible for his private school costs. To obtain reimbursement, the parents needed to show that: 1) the district denied the child FAPE; 2) the private placement was appropriate; and 3) the equities favored reimbursement. U.S. District Judge Myron H. Thompson noted he had not yet reviewed the IHO's finding that the district denied the child FAPE. Even if the district violated the IDEA, however, the parents still needed to show that the private placement met the child's disability-related needs. The judge held that the parents failed to meet that burden. Judge Thompson pointed out that the parents enrolled the child in the private school after the district attempted to place him in an alternative school for behavioral reasons. Although the parents argued that the child's behavior improved during that time, the judge noted that the parents remained on site while class was in session to address any behavioral outbursts. Furthermore, the judge observed, the child's behavioral problems persisted even with the parents' interventions. "After only 19 days of schooling, [the child] was switched from four days per week of schooling to a total of *two hours per week* of tutoring on behavior and academics," the judge wrote. Judge Thompson also pointed out that the school did not offer the occupational therapy the child needed to address his severe motor deficits. Because the placement failed to meet the child's needs, the judge explained, it was not appropriate for reimbursement purposes. ■

Proposed IEP overlooks 1st-grader's need for social-emotional goals, ABA

Case name: *E.E. v. Norris Sch. Dist.*, 83 IDELR 68 (E.D. Cal. 2023).

Ruling: A California district denied FAPE to a first-grader with autism when it developed an ambiguous IEP that did not reflect the child's unique needs with regard to occupational therapy, social skills, and applied behavior analysis. The U.S. District Court, Eastern District of California reversed an administrative decision at 120 LRP 30203 to the extent it allowed the district to implement the proposed IEP over the parents' objections.

What it means: IEP team members can't lose sight of the evaluative data when determining the type and amount of services a student needs to receive FAPE. If the data show a clear need for a particular goal, service, or methodology, the team must ensure that the final IEP reflects those needs. Not only did the evaluations in this case show the child needed ABA, but district personnel recognized his need to work on coping skills and interpersonal relationships. The team's failure to include those services in the proposed IEP despite the evaluative data increased their district's potential liability for denial of FAPE.

Summary: Citing a first-grader's clear need for ABA services and social-emotional goals, the District Court held that the omission of those services from the child's IEP amounted to a denial of FAPE. The court reversed an administrative law judge's decision at 120 LRP 30203 to the extent it allowed a California district to implement the proposed IEP without the parents' consent. Senior U.S. District Judge Anthony W. Ishii found

no fault with the district's proposal to place the child in a special day class for 68 percent of the school day. Because the evidence showed the child would not benefit from a general education classroom, the judge explained, the special day class was the child's least restrictive environment. However, the judge concluded that the IEP as a whole failed to meet the child's unique needs. The judge pointed out that the IEP did not describe the location and frequency of the child's OT services. As such, the judge observed, the parents would have no way to verify that the district was implementing that section of the IEP. Judge Ishii further noted that the IEP failed to address key areas of need. The judge agreed with the parents that the goals listed under the heading of social and emotional skills targeted the child's problem behaviors as opposed to his deficits in coping skills, play skills, and interpersonal relationships. "Though [the child] appears to have developed his social skills ..., that appears to be by happenstance rather than design," the judge wrote. Judge Ishii also observed that three evaluators — two for the district and one for the parents — agreed the child needed ABA services to learn appropriate behaviors. Given the child's clear need for a specific methodology, the court explained, the IEP's failure to include that methodology amounted to a denial of FAPE. ■

Child's lack of progress raises questions about continuing RTI

Case name: *P.W. v. Leander Indep. Sch. Dist.*, 83 IDELR 71 (W.D. Tex. 2023).

Ruling: The parents of an elementary school student with dyslexia and ADHD could sue a Texas district for disability discrimination based on its prolonged failure to evaluate their daughter for IDEA services. The U.S. District Court, Western District of Texas denied the district's motion to dismiss the Section 504 and ADA Title II claims that the parents filed on the student's behalf.

What it means: Districts that use response to intervention strategies to address students' reading difficulties need to keep a close eye on students' progress or lack thereof. If a student continues to struggle despite extensive interventions, the district must evaluate the student to determine her need for specialized instruction under the IDEA. According to the parents, this district continued using RTI strategies for three years despite the student's ongoing struggles and her teacher's growing concerns about dyslexia. Those allegations, if true, could support a finding that the district acted with gross misjudgment — the standard for liability under Section 504 and the ADA.

Summary: Allegations that a Texas district declined to evaluate an elementary school student with dyslexia despite her lack of progress with RTI strategies bolstered the parents' Section 504 and ADA claims. Holding that the parents sufficiently pleaded disability discrimination, the District Court partially denied the district's motion to dismiss. Senior U.S. District Judge David Alan Ezra noted that parents seeking relief for disability discrimination must allege more than a denial of FAPE under the IDEA. To state a viable claim under Section 504 and the ADA, the judge explained, the parents must demonstrate that the district acted in bad faith or with gross misjudgment. The judge held that these parents met that standard. According to the complaint, the judge observed, the student first began showing signs of dyslexia in kindergarten. The parents asserted that they requested a dyslexia evaluation in first grade because the student was still reversing letters and numbers. The parents further alleged that the principal talked them into withdrawing their evaluation request until the district determined whether the RTI strategies were working. Judge Ezra pointed out that the district allegedly declined to evaluate the student for dyslexia until second grade. Even then, the judge observed, it only offered the student a Section 504 plan; the district only developed an IEP after an evaluation in third grade determined the student also had ADHD. The judge explained that the district's continued use of RTI strategies despite the student's lack of progress, if true, could qualify as gross misjudgment. "[The parents] have also plausibly alleged gross misjudgment based on [district] staff repeatedly telling [them] that 'dyslexia is separate from special education' and 'dyslexia is not under special education, ... just [Section] 504,'" he wrote. The judge determined that the parents stated a claim for disability discrimination. However, the court granted the district's motion to dismiss the Section 504 and ADA claims the parents filed on their own behalf. ■

Safety plan offers adequate measures to protect 8th-grader from bullying

Case name: *B.D. and K.D. v. Eldred Cent. Sch. Dist.*, 83 IDELR 31 (S.D.N.Y. 2023).

Ruling: The parents of an eighth-grader with autism, ADHD, and chronic kidney disease could not show that a New York district's allegedly inadequate response to peer bullying denied their son FAPE. The U.S. District Court, Southern District of New York upheld a state review officer's determination that the safety plan the district developed for the student was adequate.

What it means: Some parents might object to a safety plan that imposes obligations on a student with a disability as well as district personnel. While a district cannot require a student to be 100 percent responsible for his own safety, it can develop a plan that contemplates certain actions by the student. Here, the safety plan included preventative measures such as separating the student from offenders when problems arose, monitoring common areas, and educating other students about bullying. Those obligations, placed entirely on district personnel, undercut the parents' claim that the plan required the student to prevent bullying incidents from occurring.

Summary: A New York district did not deny FAPE to an eighth-grader with autism and ADHD when it developed a safety plan that required certain action on his part to reduce peer bullying. Rejecting the notion that the district made the student entirely responsible for his own safety, the District Court upheld a state review officer's decision for the district on the parents' IDEA claim. U.S. District Judge Philip M. Halpern acknowledged that a district can deny a student FAPE by failing to respond appropriately to peer bullying. To establish an IDEA violation, however, the parents needed to show that the district was deliberately indifferent to bullying or failed to take reasonable steps to prevent it. The judge determined that neither circumstance applied in this case. Judge Halpern pointed out that the district convened a meeting to address the parents' concerns about bullying and develop a safety plan for the student. "The safety plan states that '[t]he purpose of this plan is to provide a safe and secure learning environment that is free from harassment, intimidation, or bullying of [the student],'" the judge wrote. Given the district's efforts to address peer bullying, the judge explained, the parents could not show the district was deliberately indifferent. The judge also

determined that the plan included appropriate measures to protect the student from bullying. Although the plan contemplated some action by the student, such as leaving class early and reporting bullying incidents when they occurred, the judge noted that the plan imposed 11 obligations on school personnel. Those obligations included separating the student from offenders when problems arose, monitoring common areas, and educating other students about bullying. Determining the safety plan was adequate, the District Court upheld the SRO's finding that the parents were not entitled to reimbursement for the student's unilateral private placement. ■

Parents' silence on evaluations, IEP derails challenge of proposed program

Case name: *Michael F. v. Upper Darby Sch. Dist.*, 83 IDELR 35 (E.D. Pa. 2023).

Ruling: The parents of an elementary school student with specific learning disabilities in reading and writing could not recover the cost of their son's unilateral private placement from a Pennsylvania district. The U.S. District Court, Eastern District of Pennsylvania upheld an impartial hearing officer's decision at 122 LRP 3304 that the student's proposed IEP offered FAPE.

What it means: While a district must evaluate a parentally placed private school student upon request, it has no duty to anticipate the parent's concerns. Districts that keep detailed records of all communications with parents will have a stronger defense against claims that they refused to evaluate or disregarded the student's special education needs. Although these parents claimed the student's proposed IEP was inadequate, the district pointed out that they never objected to the student's program. That evidence, along with the parent's failure to enroll the student or request a reevaluation, showed the district had no reason to revisit the proposed IEP.

Summary: Despite alleging numerous defects with their son's evaluation and proposed IEP, the parents of a parochial school student with SLDs could not show a Pennsylvania district denied their son FAPE. The District Court upheld an administrative decision at 122 LRP 3304 that denied reimbursement for the student's subsequent enrollment in a private special education school. According to the parents, the district violated the IDEA by failing to conduct an appropriate initial evaluation, developing an inadequate IEP, and failing to reevaluate the student 21 months later when they asked about enrolling him in the district. The court disagreed. U.S. District Judge Gerald J. Pappert noted that the district evaluated the student at the parents' request while he was still enrolled in the parochial school he had attended since preschool. Not only did the resulting evaluation identify the student's difficulties in reading and writing, the judge observed, but the proposed IEP included goals and services that addressed the student's need to learn basic reading skills. The judge pointed out that the parents did not object to the IEP or inform the district that they were enrolling the student in a private special education school. Instead, the parents emailed the school psychologist 21 months later and asked how to return the student to his neighborhood school. Judge Pappert rejected the parents' argument that their questions about the enrollment process amounted to a request for a reevaluation. "[The] parents knew how to request an evaluation — they did so in the fall of 2018 and signed a form acknowledging their receipt of procedural safeguards after the January 2019 IEP meeting," the judge wrote. Furthermore, citing the parents' "unreasonable" failure to share their concerns with the district, the court held the parents would not be entitled to reimbursement even if the district denied the student FAPE. ■

Residential therapy, 'wilderness' programs for mental health not FAPE

Case name: *N.N. v. Mountain View-Los Altos Union High Sch. Dist.*, 83 IDELR 7 (N.D. Cal. 2023).

Ruling: The mother of a high schooler with depression and substance abuse issues was not entitled to recover the costs of the teen's two private residential programs. The U.S. District Court, Northern District of California denied the mother's request for tuition reimbursement under the IDEA.

What it means: While a residential placement may sometimes be necessary for a student to make educational progress, some residential programs may only address a student's medical or mental health needs. In those circumstances, a district may not necessarily be responsible for the costs of the residential program. Here, the district highlighted that the two private residential programs the student attended only provided "wilderness opportunities," group therapy, and individual therapy to address her mental health. By demonstrating that neither program provided individualized educational services, the district proved that the programs were unnecessary for the student to make educational progress.

Summary: Because two private residential programs did not offer educational services to a high schooler with mental health issues, a parent was not entitled to recover the costs of those unilateral placements. Finding that the residential programs were not necessary for the teen's educational progress, the court declined to award the mother tuition reimbursement. Under the IDEA, the court explained, the parent of a student with a disability is entitled to reimbursement only if: 1) the district's proposed public placement violated the IDEA; and 2) the private school placement is necessary for educational purposes. The court opined that the parent failed to establish the second element — that the student's two private, unilateral placements were appropriate. It acknowledged that the district denied the teen FAPE by delaying her special education evaluation during SY 2017-18. However, the court highlighted that neither private residential placement offered the student individualized educational services. Rather, the evidence showed that the focus of both programs was to address the student's mental health issues. In the first program, the court noted, the student received "experiential opportunities of a wilderness setting with a clinically focused intervention." In the second program, the student attended weekly two-hour group therapy sessions and individual therapy sessions that included family therapy and therapeutic phone calls with the parents. These therapy sessions primarily attempted to resolve the student's depression, anger, failed relationships with peers and family, and self-advocacy skills. Although the student earned several school credits while at the first program and attended study hall while at the second program, the court found no evidence that she received individualized educational services from special education teachers at either program. Because neither residential program included an "educational component," the court held that they did not qualify as appropriate placements eligible for reimbursement. ■

Failing to count partial day removals, detentions results in untimely MDR

Case name: *Hot Springs County (WY) Sch. Dist. #1*, 123 LRP 15931 (OCR 02/28/23).

Ruling: A Wyoming district entered into a resolution agreement to resolve with OCR its failure to conduct a manifestation determination review after subjecting a student with a speech-language impairment to disciplinary removals for 11.5 days in violation of ADA Title II and Section 504. It promised to train staff and determine whether compensatory services or remedial measures were necessary.

What it means: Districts have to stay on top of counting days of disciplinary removals for students with disabilities to ensure that they conduct an MDR before exceeding the 10-day threshold. Although this district had procedures in place for tracking disciplinary removals and counting days, it failed to count partial days of suspension, removals to other classrooms, and lunch detentions, which resulted in an untimely MDR. Had staff recognized the pattern of behaviors and exclusion and better understood what constitutes a disciplinary removal, it could have scheduled the MDR on time.

Summary: A Wyoming district should have conducted an MDR for the student with a speech language impairment before disciplinary removals totaled 11.5 school days. The district signed a resolution agreement to resolve allegations of disability discrimination. The student regularly engaged in disruptive behaviors that led to disciplinary removals. The student's IEP team changed his placement from general education to a separate setting, a space in a special education classroom. The district then set placement at a board of cooperative education services facility for 60 to 90 days, and the student was to stay home and complete work packets until he could start. The parent contacted OCR. OCR explained that ADA Title II and Section 504 prohibit districts from subjecting a student with a disability to a disciplinary, significant change in placement without first conducting an MDR. An exclusion for more than 10 consecutive school days, or more than 10 cumulative days under a pattern of exclusion, constitutes a significant change in placement, it added. Here, the district didn't count placement in another classroom or in lunch detention as disciplinary removals. It counted days for MDR purposes by adding up hours and minutes of removal and counting partial day in-school suspensions and out-of-school suspensions only when it exceeded seven hours and 35 minutes. OCR noted that the student served OSS for six days, he was sent home early on six days, including four days for more than half the day, and he was removed to a more restrictive setting on eight occasions for a total of 16.75 hours. The removals totaled more than 86 hours, or about 11.5 school days, by September 29, yet the district didn't hold an MDR until October 5, OCR observed. Additionally, the removals constituted a pattern, his behaviors were substantially similar, and they occurred in close proximity, it remarked. Therefore, the district failed to conduct a timely MDR, OCR found. ■

Questioning of service dog's status at football game discriminates

Case name: *Higley (AZ) Unified Sch. Dist.*, 123 LRP 15847 (OCR 02/14/23).

Ruling: OCR found that although an Arizona district didn't prevent a disabled veteran from attending a football game on campus with his service animal, staff's questions about the dog's service animal status violated ADA Title II and Section 504. The district agreed to resolve OCR's compliance concerns by reviewing, revising, and publishing its policies and procedures and rental terms, training staff, and removing and replacing signage regarding the use of service animals.

What it means: Not only must districts allow individuals with disabilities to use service animals on campus, they must also limit the extent to which they question the individual about the animal. Here, the district improperly questioned a patron at a football game about his service animal, requesting proof of its status and attempting to confine him to a specific viewing area. Better staff training on what you can and cannot ask about a service animal might have prevented the improper interrogation and ensured that the patron's access to the game wasn't impeded because of his disability or use of a service dog.

Summary: An Arizona district violated the rights of a disabled veteran attending a football game with his service dog and entered into an agreement to resolve the discrimination claims. The veteran filed a complaint with OCR alleging that the district discriminated against him on the basis of disability as a result of his service animal's attendance at a football game and ultimately prevented him from fully accessing the event. ADA Title II and Section 504 prohibit discrimination on the basis of disability by public schools, OCR explained. Accordingly districts must modify their policies to permit the use of service animals by individuals with disabilities. They can only ask that a service animal be removed from campus if it is out of control, not housebroken, poses a threat to health or safety, or is not under the control of the handler, OCR added. They may not inquire about the nature or extent of a person's disability, and may only ask whether the animal is required because of disability and what work or task it has been trained to perform, OCR explained. A district cannot require documentation or proof that the animal qualifies as a service animal, it added. OCR found that the veteran was permitted to attend the game; however, it expressed concerns about his treatment during the event as well as the district's signage, policies and procedures, and lack of staff training. The veteran was subjected to ongoing requests to isolate himself and his service dog to a specific area for viewing despite that video footage evinced that the animal was not out of control, it observed. In addition, the inquiry regarding "proof" of service animal status was improper and noncompliant, as was the request for the veteran to leave or segregate from others, OCR determined. Finally, signage at the school improperly implied that the only allowable animals on campus were those for the "visually impaired," OCR noted. ■

Block schedule may cause EL students with disabilities to miss services

Case name: *Boulder Valley (CO) Sch. Dist.*, 123 LRP 3551 (OCR 11/21/22).

Ruling: The Office for Civil Rights expressed concerns that a Colorado district may have discriminated in violation of ADA Title II, Section 504, and Title VI by failing to ensure that English learners with disabilities received their needed EL and special education services. To resolve OCR's concerns, the district committed to create a dual services plan for OCR's review, train staff, and determine if affected students required compensatory services.

What it means: Districts may discriminate if they don't implement the full amount of EL services EL students with disabilities require, in addition to their special education services. This district

didn't have a plan or procedure in place to ensure that students who received both EL and special education services received their full amount of services with fidelity. Rather than schedule EL services for "dual services students" across-the-board, the district should have made individualized determinations regarding each student's schedule to ensure that the full amount EL and special education services it determined they required could be implemented.

Summary: A Colorado elementary school may have systemically discriminated against English learners with disabilities by failing to ensure they received the full amount of EL services they required. OCR received a complaint alleging that the district discriminated against students on the basis of national origin and disability by failing to provide needed English language development and special education services. Districts must provide equal educational opportunity to EL students, including taking affirmative steps to address their language needs under Title VI, OCR explained. And, ADA Title II and Section 504 prohibit discrimination and require that districts ensure EL students with disabilities receive services that meet their language and special education needs. OCR confirmed that the school's dual services students received both EL and special education services during the school year, including 30 minutes of daily pull-out direct EL services to kindergartners and 45 minutes to students in grades 1 through 5. All dual services students received pull-out EL services and special education services during the daily 45-minute "enrichment block." OCR noted that staff reported tension between the EL services teacher and the special education teacher regarding scheduling because both services were provided during the block period. And, although the EL teacher sometimes provided direct instruction outside of the block and push-in services in general education classrooms, there were concerns that some students didn't receive their full amount of direct EL instruction, OCR observed. There were no concerns that students missed special education services. OCR was concerned that there was ambiguity in how dual services students would receive the full amount of EL services they required if there wasn't enough time in the block period and that some may have missed needed services. The school didn't have a process to ensure that required EL services were implemented or to specify how or when general education teachers would deliver direct EL instruction. ■

Hawaii district offers sufficient IEP during pendency of reevaluation

Case name: *Hawai`i Pub. Schs.*, 123 LRP 9623 (SEA HI 01/20/23).

Ruling: An independent hearing officer found that a Hawaii district offered FAPE to student with an undisclosed disability in compliance with the IDEA by way of an IEP that would be updated once a reevaluation was completed.

What it means: IEPs must be reasonably calculated to meet students' unique needs based on the information the district has at the time they are developed. This district showed that it developed an appropriate IEP with the little information it had from the student's private school. It relied upon revisions it made, including updating assessment scores and continuing supplementary aids and supports, to show that it continued the offer of FAPE during the pendency of a reevaluation and until the IEP could be updated with the results. The district pointed out that the parents agreed to the procedure and that more data and discussion were needed.

Summary: A Hawaii district offered an appropriate IEP for a student with an undisclosed disability while it waited for reevaluation results. The district requested data from the student's private school regarding the student's present levels of educational performance, strengths, and needs. Determining that it didn't have enough information, the IEP team proposed a reevaluation. The team, including the parents, agreed it needed the reevaluation results to update the student's IEP and that it would meet again when the reevaluation was completed. The parents filed for due process. The IHO explained that the "snapshot rule" evaluates the appropriateness of an IEP under the IDEA and whether it was designed to appropriately address the student's unique needs based on what was objectively reasonable at the time it was developed. She noted that the private school's program was based entirely on state standardized test scores, it didn't require cognitive testing, maintain progress reports, or necessarily align with state educational standards. The IHO concluded that, based on the very little information provided by the private school, the district was warranted in seeking further assessments and information to develop the student's IEP. She found that the district's June IEP and prior written notice clearly spelled out to the parents the continued offer of FAPE during the reevaluation's pendency. The documents showed that services were offered at the home school until the new IEP was developed and that the district had until August to complete the agreed-upon assessments and hold a new IEP meeting. And the parents agreed to that procedure. Thus, the IHO rejected the parents' claim that the student was left without a viable IEP, forcing them to reenroll at the private school. They failed to show that the IEP was inappropriate based on the information the district had at the time, the IHO concluded. It revised goals and objectives, included information from the private school's IEP and most recent assessment results, and provided supplementary aids and supports not unlike those in the previous IEP, she observed. ■

Ohio district corrects child find violation by district of service

Case name: *Boardman Local Schs.*, 123 LRP 11347 (SEA OH 02/13/23).

Ruling: An Ohio district acknowledged a parent's allegations regarding IDEA child find, evaluation, and notice and took corrective measures to resolve the violations.

What it means: A student's district of residence is responsible for ensuring the student receives FAPE even if another district provides services. Here, a student's district of residence should have had procedures in place to check and monitor the services provided to its students by other districts as well as a staff person to verify that child find activities extended to all students in its jurisdiction, including those who receive services in other districts.

Summary: An Ohio district acknowledged noncompliance with the IDEA and resolved a parent's allegations that it failed to timely identify, locate, and evaluate a child receiving service from another district. The parent filed a state complaint alleging child find, evaluation, and notice violations by the student's district of service, not the district of residence. The district of residence acknowledged the alleged violations and committed to resolve them. The state ED explained that the district of residence is responsible for ensuring FAPE for every eligible child in its jurisdiction under the IDEA, regardless of whether services are provided by another school district. Therefore, any additional corrective action was the responsibility of the district of residence. It noted that staff from the district of res-

idence met with the parent and agreed to evaluate the student for special education services based on the parent's request and the team's review of available assessment data. During this meeting, a school age planning form was completed and the parent signed consent for the evaluation. The district issued PWN, the team scheduled an evaluation report team meeting, and the school psychologist initiated testing. Nevertheless, the state ED required additional actions from the district of residence, including provision of copies of notice, invitations, planning forms, meeting notes, evaluation reports, and a copy of the IEP and compensatory education plan if it finds the student eligible. It also ordered the district to develop a memorandum addressing child find, evaluations, and PWN. ■

High staff-student ratio undermines parent's bid to increase para support

Case name: *Miami Dade County Sch. Bd.*, 123 LRP 13729 (SEA FL 03/15/23).

Ruling: The parent of a student with autism and a speech language impairment failed to establish that a Florida district denied the student FAPE by failing to provide the student with additional paraprofessional support. Noting that the student was receiving adequate support in a highly structured, self-contained classroom, the administrative law judge found that the district was complying with the IDEA.

What it means: A district may be able to defend itself against a parent's claim that a student is receiving insufficient paraprofessional support by pointing to the staff-student ratio in the student's current placement and the quality of adult support the student is receiving there. This district overcame the parent's claim that the student needed more paraprofessional support by asserting that the student attended a self-contained classroom with one teacher, three aides, and eight other students. It also pointed to the IEP's statement that the adults in the classroom were currently meeting all the student's needs.

Summary: Given that a student's self-contained classroom included four staff members for just nine students, the parent of a student with autism and speech language impairment could not establish that the student needed still more paraprofessional support. Finding that the student's Florida district provided the student FAPE, an ALJ dismissed the parent's due process complaint. The parent alleged that the district denied the student FAPE by failing to provide the student with additional support from a paraprofessional. The ALJ explained that to meet its substantive obligation under the IDEA, a district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Here, there was insufficient evidence that the district fell short of that standard, the ALJ found. The ALJ acknowledged that the parent provided credible testimony that the student was struggling academically and would be better served through additional paraprofessional support. On the other hand, the ALJ observed, the student was currently attending a small, structured class with nine students, one special education teacher, and three paraprofessionals. Further, the ALJ noted that the IEP stated that the student was making progress in all areas in that setting. Also, according to the IEP, the ALJ stated, the adults in the classroom were addressing all the student's needs, and the IEP team agreed that the student didn't need further paraprofessional support. The ALJ also rejected the parent's claim that the district failed to timely evaluate the student. Given that the reevaluation report did not result in a modification to any of the student's existing supports or services, the ALJ remarked, the parent failed to show that any delay resulted in harm to the student. ■

School's use of unqualified substitutes to lead special classes violates IDEA

Case name: *In re: Student with a Disability*, 123 LRP 15403 (SEA NV 03/24/23).

Ruling: The Nevada Department of Education found that a charter school and the State Public Charter School Authority violated the IDEA by utilizing underqualified long-term substitutes to teach special education. The state ED found that the authority and school failed to ensure the teachers were properly licensed and possessed the necessary content knowledge and skills to teach the assigned students with disabilities. The state ED instructed the authority and school to implement a corrective action plan that addresses, among other issues, the additional measurable steps the school will take to attract, prepare, and retain special education teachers who meet IDEA requirements.

What it means: Schools must ensure substitute teachers are properly licensed and prepared to teach special education students before assigning them to instruct a special education class. If a school is unable to find properly licensed teachers or substitutes, it should ramp up its recruitment efforts. It should also expand and fully document the training it provides to substitutes. This school fell short of IDEA requirements by using seven long-term substitutes who lacked special education licenses to teach students with disabilities and by providing them with only limited training.

Summary: The shortage of special education teachers plaguing Nevada did not excuse a charter school's use of substitute teachers who lacked special education teaching licenses and received insufficient training. The state ED found that the State Public Charter School Authority and the charter school violated the IDEA's teacher qualification requirements. A former substitute teacher filed a state complaint alleging that the school was utilizing unqualified teachers. The state ED explained that a state education agency must ensure that special education teachers are adequately trained and that they possess the content knowledge and skills to serve children with disabilities. Further, the stated ED observed, special education teachers must either: 1) be fully certified as a special education teacher; or 2) have passed the state special education teacher licensing examination and hold a license to teach special education. Here, nine of the 13 special education instructors at the school were substitute teachers, the state ED noted. Of those, seven possessed only a standard substitute license, the state ED observed. Yet, the state ED remarked, the school employed them to lead special education classes, develop IEPs, and participate in IEP meetings for over a year. The state ED also pointed out that the substitutes received only minimal special education training. For example, at the start of the 2022-23 school year, the school had the substitutes review the school's special education binder for two hours and provided them four hours of additional training. The school's documented training efforts were not sufficient "to ensure the seven substitutes ... possessed the necessary content knowledge and skills to teach the assigned students with disabilities and perform the related duties such as writing draft IEPs and providing input as the only special education teacher of the student at IEP meetings," the state ED wrote. ■