



# Special Education Landscape Briefing

An Update on Pressing Legal Issues in Special Education

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# IDEA OVERVIEW

The IDEA mandates a FAPE in the LRE for all students with disabilities between the ages of 3 and 21 or until they earn a high school diploma

- Requires school boards to develop an IEP in conference with parents
- Includes elaborate due process procedures to protect the rights of students and settle disputes between school districts and parents

- Imposes an affirmative obligation on states, through local educational agencies, or school boards, to identify, assess, and serve all students with disabilities living in their districts
- Entitles children to instruction, at no cost to their parents, that is specially designed to meet their unique needs
- To be eligible for IDEA services, students must:
  - Be between the ages of 3-21 inclusive
  - Have a specifically identified disability
  - Need special education and related services

# FAPE

*Timothy S.* (1<sup>st</sup> Cir.)

- *Zero reject*

*Rowley* standard (U.S. Supreme Court)

- IEP must be developed in conformance with IDEA's procedures
- IEP must be reasonably calculated to confer "some educational benefit"

*Endrew F.* standard (U.S. Supreme Court)

- Trivial educational benefit is not enough
- IEP must aim to allow the child to make progress
- IEP must contemplate an educational program "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"

# Least Restrictive Environment

As summarized by the 9<sup>th</sup> Cir. in *Rachel H.*, IEP teams must consider the following in placing students in the LRE:

- The educational benefits of placing children in general education classes
- The nonacademic benefits of such placements
- The effect that the presence of students with disabilities would have on teachers and other children in the classes
- The costs of inclusionary placements.

# Hot Topics: Eligibility to Age 21 Inclusive

- Limitation: IDEA does not require schools to offer services to students with disabilities through their 21<sup>st</sup> year if their states do not require them to provide services to students of the same age who do not have disabilities
- If a state provides general education to students up to the age of 22, it must do the same for students with disabilities who require special education
- If a state offers publicly-funded adult education programs to students over 18, school boards must continue to provide FAPes to students with disabilities
- If a school allows students who repeat grades to continue to attend high school beyond 18, they must continue to provide FAPes to students with disabilities

- Some states' laws stipulate that students are eligible for special education services until the end of the school year in which they turn 21
  - Schools in those states do not have to provide special education services to students beyond that point if they do not provide any educational services to the general population in the same age group
  - If a state, either by legislation or practice, does not provide educational services to general education students beyond their 21st birthdays, schools are not required to provide FAPEs to students with disabilities beyond that age

Recent decision: *N.D. v. Reykdal*, 102 F.4th 982, 430 Educ. L. Rep. 26 (9th Cir. 2024)

# Hot Topics: Effect of GED Diploma

- The IDEA's regulations specifically state that “the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or general education credential (GED)”
- The key phrase here is “fully aligned”
- Showing that a GED is fully aligned with a state's standards may be a high bar because most states have set high academic standards under the Every Student Succeeds Act
- Students with disabilities who drop out of high school but take and pass the GED assessment may still be eligible to return to high school and receive IDEA services through the age of 21

Recent decision: Board of Education of the Township of Sparta v. M.N. *ex rel.* A.D., 258 N.J. 333, 318 A.3d, 433 Educ. L. Rep. 412 (N.J. 2024)



# Hot Topics: Dual Enrollment/Dual Credit Programs

- Students with disabilities enrolled in dual credit programs may not be able to receive needed special education services in these classes
- May depend on how states define secondary education
- IDEA needs to be amended to clarify that students with disabilities who have not yet reached the age of 22, have not graduated from high school, and take college courses for credit toward their diplomas are entitled to FAPEs

Recent decisions: *Bradley v. Jefferson County Public Schools*, 88 F.4<sup>th</sup> 1190, 424 Educ. L. Rep. 41 (6th Cir. 2023); *Holland v. Kenton County Public Schools*, 88 F.4<sup>th</sup> 1183, 424 Educ. L. Rep. 34 (6<sup>th</sup> Cir. 2023)

# Hot Topic: Providing Services Beyond the Normal School Day

- The IDEA's reach may extend beyond the traditional school day when a student's unique needs require an alternate schedule
- Nothing in the IDEA indicates that schools are required to provide a FAPE only if it can be done within the confines of a normal school day
- IEPs must be developed to meet the unique needs of each child, not to fit the child into existing programmatic modes

Recent decision: Osseo Area Schools, Independent School District No. 279 v. A.J.T., 96 F.4th 1062, 427 Educ. L. Rep. 675 (8<sup>th</sup> Cir. 2024)

# Hot Topic: Rights of Adult Students

- The IDEA mandates services through age 21, but because students reach the age of majority at age 18, they can act on their own behalf unless they are adjudicated as incompetent
- Courts may award reasonable attorneys' fees to a prevailing party who is the **parent** of a child with a disability
- The Second Circuit recently ruled that a student who prevailed on his own behalf in administrative proceedings could sue to recover attorneys' fees
- The court noted that the IDEA's definition of "parent" is broad, encompassing anyone who is legally responsible for the child's welfare

Recent decision: J.S. v. New York State Department of Corrections and Community Supervision, 76 F.4<sup>th</sup> 32, 419 Educ. L. Rep. 15 (2d Cir. 2023)

# Hot Topic: Transportation

- The IDEA's related services mandate requires school boards to provide students with disabilities with transportation if needed for them to access a FAPE
- In addition to the ride to school, boards also may need to provide aides or even nurses on the vehicles to ensure that students reach school safely
- Transportation services must be comprehensive and be designed to meet each student's unique needs
- This means that school boards may need to provide portal-to-portal transportation for students who also need to be conveyed from buildings to vehicles

Recent decision: *Pierre-Noel ex rel. K.N. v. Bridges Public Charter School*, 113 F.4<sup>th</sup> 970, 433 Educ. L. Rep. 855 (D.C. Cir. 2024)

# Hot Topic: Video-Recording IEP Meetings

- Courts have long held that parents may tape record IEP meetings so that they may better understand and fully participate in the proceedings
- Video-recording, however, may not necessarily be required
- The First Circuit held that a parent did not have a First Amendment right to video-record IEP team meetings
- The IEP team's refusal to allow the recording, in the court's view, was related to its interest in promoting candid conversations regarding the development of IEPs
- Note: The parent did not claim an IDEA right to video-record the meetings

Decision: *Pitta v. Medeiros*, 90 F.4th 11, 424 Educ. L. Rep. 751 (1<sup>st</sup> Cir. 2024)

# Hot Topic: Reimbursement When Parents Fail to Cooperate

- Parents may be reimbursed for the costs of unilateral placements if they succeed in showing that the school board denied the child a FAPE and their chosen placement was appropriate
- Reimbursement may be limited or denied if a parent's failure to cooperate prevented a school board from providing a FAPE
- Courts “balance the equities” in determining appropriate awards and may reduce or deny awards if parents are uncooperative
- Thus, if the parent's lack of cooperation, rather than a failure on the IEP team's part, is the proximate cause of the board's failure to offer a FAPE, a court may consider reimbursement to be inequitable
- Recent decision: *Ferreira v. Aviles-Ramos*, 120 F.4<sup>th</sup> 323, 436 Educ. L. Rep. 20 (2d Cir. 2024)

# What's on the Horizon for Special Education?

# IDEA Reauthorization

- The IDEA was reauthorized and amended in 1986, 1990, 1997, and 2004
- Although the act does not have a fixed schedule for reauthorization, it is long overdue
- Reauthorizations have several purposes
  - Codifying case law
  - Addressing shortcomings
  - Updating the law to reflect changes in educational practice & standards,
- Presently, there is no reauthorization bill before Congress but members have expressed some interest



# Proposals

Proposals include:

- Increasing the federal contribution
  - Although the IDEA promises federal funding for special education, the 40% target has never been met, leaving states and local school boards to cover the rest
- Stronger protections for students of color and English learners who are disproportionately identified for special education or disciplined more harshly
- Improved support for students moving from school to employment or higher education
- Better tracking of outcomes and more transparent reporting on how IDEA funds are used.

# Department of Education Staff Reductions

466 employees of the education department have been slated for layoffs, including

- 121 from the Office of Special Education & Rehabilitation Services, nearly wiping out the office responsible for administering the IDEA
- 137 from the Office of Civil Rights, gutting the office responsible for investigating civil rights violations

These layoffs have been temporarily paused by the issuance of a temporary restraining order issued by a federal trial court in California

# **Proposed Transfer of Special Education Oversight to the Department of Health & Human Services**

- Do HHS personnel have the expertise to ensure that the IDEA is being implemented properly?
  - How will funds be distributed to states and local school boards?
  - Will school personnel and parents have a resource to answer their questions?
  - Will accountability and procedural protections be weakened?
- Transferring responsibility for IDEA will require an act of Congress

# Questions