



The first U.S. Supreme Court building, New York City (1790).

Leading Cases & Lessons Learned

Lenore Knudtson

WAVES
August 2023

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Who we are

- Pingora Consulting, LLC is dedicated to improving outcomes for students with disabilities across the country.
- We work with states to provide professional development, systems building, rule and policy drafting, and dispute resolution services.

2



Case law refines our knowledge of the IDEA and federal regulations. We gain a deep understanding of how judges interpret the law. Whether a decision is binding or persuasive in your jurisdiction, it all matters.

3



The Supreme Court

In March 2023, the Court decided the critical case of *Perez v. Sturgis*, 82 IDELR 213 (2023).

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Exhaustion Before Perez

Under the IDEA, the decision to settle meant that a student was barred from bringing a similar case against the school in court—**even under a different federal law.**

Perez v. Sturgis Pub. Schs., 79 IDELR 1 (6th Cir. 2021).

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The Case

- Miguel Perez emigrated from Mexico and started going to school in the Sturgis Public School District.
- Since Perez is deaf, the school assigned him a classroom aide--but the aide was not trained to work with deaf students and did not know sign language.
- Still, Perez appeared to progress academically. His teachers gave him As or Bs in nearly every class, and he was on the Honor Roll every semester.
- Perez and his parents assumed he was on track to earn a high-school diploma.

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The Case



Just months before graduation, the school informed the family that Perez did not qualify for a diploma--he was eligible for only a "certificate of completion."



Perez (20 years old) filed a due process complaint with the Michigan Department of Education.



Before the hearing, the parties settled. Perez successfully obtained ALL RELIEF REQUESTED.

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The Case



The school agreed to pay for Perez to attend the Michigan School for the Deaf, for "post-secondary compensatory education," for sign language instruction for Perez and his family, and attorney fees.



The ALJ dismissed the case with prejudice based on the full settlement of all claims.

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The NEXT case



A few months later, Perez sued Sturgis Public Schools and the Sturgis Board of Education in federal court.

Under the ADA, Perez alleged that the school discriminated against him by not providing the resources necessary for him to fully participate in class.

Along with declaratory relief, Perez sought compensatory damages for his EMOTIONAL DISTRESS.

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The NEXT case

Sturgis moved to dismiss the case arguing that the IDEA required Perez to exhaust his administrative remedies.

Sturgis argued that because Perez settled his IDEA claim before it went to hearing, the IDEA barred the case.

The federal court case was dismissed, and Perez appealed.

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The Meaning

- Up to this point in time, if an IDEA plaintiff wanted to preserve other federal court claims under other federal laws, the parties had to proceed to due process hearing and forgo settlement.
- If a parent agreed to settle the matter in a way that was beneficial to the child, the parent lost the right to pursue other remedies under other federal laws.



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The Meaning

- If a due process hearing officer or ALJ has conducted no hearings and issued no decisions, there is nothing appeal.
- A settled case has no “aggrieved party” necessary for an appeal.
- Perez did not exhaust IDEA’s procedures, and “to pursue his ADA claim, that is what he needed to do.”

Perez v. Sturgis Pub. Schs., 79 IDELR 1 (6th Cir. 2021).



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THE SUPREME COURT RULED THAT THE IDEA'S EXHAUSTION REQUIREMENT DOES NOT APPLY TO FEDERAL CLAIMS THAT ONLY SEEK MONEY DAMAGES AS A REMEDY UNDER OTHER STATUTES.

Perez v. Sturgis, 82 IDELR 213 (2023).

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Perez v. Sturgis, 82 IDELR 213 (2023).

The door is now open for a parent to address FAPE related concerns through a state complaint, mediation, or due process while proceeding simultaneously and directly into federal court for monetary damages.

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Lessons Learned

1

Districts will no longer be able to use the IDEA's exhaustion requirement as a shield for money damage claims.

2

If seeking compensatory damages (\$\$\$), a parent is no longer required to request a due process hearing.

3

IDEA claims may be resolved through a state complaint, mediation, or due process with no bearing on claims for **money damages under other federal laws.**

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Child Find


34 C.F.R. §300.111



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Child Find

- When does the obligation “mature?”
- The LEA has a mature child find obligation when it has reason to:
 - Suspect that the student has an IDEA disability, AND
 - Suspect that the student needs specially designed instruction.



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D.O. v. Escondido Union Sch. Dist., 82 IDELR 125 (9th Cir. 2023).

Although a district learned of an IDEA-eligible student's autism diagnosis in December 2016, it did not err in waiting until April 2017 to propose a reevaluation.

The 9th Circuit held that the parent's failure to provide a copy of the private evaluation report despite the district's requests justified the four-month delay. The district learned of the student's private autism diagnosis during December 2016 IEP meeting.

At that point, the district was on notice of the need to evaluate the student for autism.

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D.O. v. Escondido Union Sch. Dist., 82 IDELR 125 (9th Cir. 2023).

- However, the district could not create an assessment plan until it knew which autism tests the private evaluator had administered. "Indeed, if tests are duplicated within a certain time frame, the tests can be considered null and void."
- The district asked the parent multiple times for the evaluation report.
- Given that the district evaluated the student promptly after receiving the assessment report and the parent's consent, the majority rejected the District Court's holding that the evaluation was untimely.
- No violation!

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

- 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 acknowledged that a district does not have to evaluate every student whose parent requests an IEP.

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JZ v. Catalina Foothills Sch. Dist.,

83 IDELR 62 (D. Ariz. 2023).

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.

The parents submitted a report from a clinical neuropsychologist that described the student's depression and ODD and their interaction with his earlier diagnoses of ADHD.

"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."

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Miller v. Charlotte-Mecklenberg Schs. Bd. of Educ., 83 IDELR 1 (4th Cir. 2023).

- A district did not violate the IDEA when it determined that a seventh-grader with a private diagnosis of autism was ineligible for special education services
- The district evaluated the student and considered his eligibility for special education services, conducting assessments and reviewing data.
- The student did not meet the state's criteria as a learner with a disability.
- "[The parent's] disagreement with the outcome of [the student's] evaluation does not amount to a failure to conduct an evaluation in the first instance."

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Ja.B. v. Wilson County Bd. of Educ., 82 IDELR 191 (6th Cir. 2023).

- The 8th grader moved from Illinois to Tennessee and began displaying disruptive, noncompliant, and disruptive behavior for the first time.
- The parents wanted the student evaluated for IDEA eligibility, but district attempted interventions to address the student's behavior.

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Ja.B. v. Wilson County Bd. of Educ., 82 IDELR 191 (6th Cir. 2023).

The court agreed with the district because there was no history of similar behavior in the past, the student recently moved, and the behaviors were not unusual or severe enough to suggest a disability.

The court recognized that districts cannot use a response to intervention process to delay or deny an evaluation for IDEA services.

In this case, the district had no reason to suspect an IDEA disability and the need for special education.

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G.F. v. Ocean Township Bd. of Educ., 81 IDELR 261 (D.N.J. 2022).

- A private dyslexia diagnosis, without more, did not automatically make a grade schooler eligible as a student with a specific learning disability.
- The student did not require special education due to an IDEA-recognized disability and was not eligible.
- Under the IDEA, a student is generally eligible for an IEP if she: 1) has one or multiple disabilities recognized by the IDEA; and 2) needs special education and related services due to her disability.
- The student here did not meet either criterion, the court concluded.

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G.F. v. Ocean Township Bd. of Educ., 81 IDELR 261 (D.N.J. 2022).

- Although the student received a private dyslexia diagnosis, the district determined that she did not have an SLD as defined by the IDEA.
- After conducting "a complete battery of assessments," the district found no severe discrepancy between the student's learning aptitude and current academic achievement.
- Even if the district found the student to have an SLD, the disability did not adversely affect her educational performance to the point that she needed special education and related services.
- Records showed that the student was making progress in her general education program.

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Lessons Learned

- 1

Child find obligation is triggered by a suspicion of an IDEA disability and the need for specially designed instruction.
Don't delay.
- 2

2 prong eligibility:
1: IDEA disability that adversely impacts education, and
2: The need for special education.
- 3

Private diagnosis does not mean automatic eligibility under the IDEA.
Comprehensively evaluate, then decide.

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Educational Benefit

The *Andrew F. Standard*

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FAPE

- An IEP must be reasonably calculated to provide educational benefit appropriate in light of a child's unique circumstance.
- *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017).

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Washington v. Katy Indep. Sch. Dist., 82 IDELR 218 (5th Cir. 2023).

- An IEP team's efforts to address a high schooler's lost credits and the roots of his absenteeism after he was tased by an SRO helped establish that the Texas district offered the student with ED and intellectual disability FAPE.
- The court rejected the student's mother's contention that the district failed to timely address the student's absences.
- After an SRO allegedly tased the student, the student's mother withdrew her son from school for the Spring term. The student continued to struggle with absenteeism the following Fall.

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Washington v. Katy Indep. Sch. Dist., 82 IDELR 218 (5th Cir. 2023).

- The court pointed out that the IEP team discussed attendance, attendance expectations, and the student's return. The team also adjusted the student's BIP to address the underlying causes of his attendance problems, offered the student ESY services so that he could recoup lost credits, and recommended an FBA to determine further ways the district could support the student.
- The court noted that the student achieved passing grades when he returned to school, demonstrated an ability to learn, engaged with others, and accrued enough credits to graduate.

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Laboratory Charter School v. M.R.S., 123 LRP 21938 (E.D. Pa. 2023).

Charter schools and other local educational agencies cannot rely on parents of transfer students with disabilities to provide copies of their children's IEPs.

If the parent informs the school that the student had an IEP in effect in her previous district, the school must take reasonable steps to obtain the student's records promptly.

Here, the student's enrollment form expressly stated that she had an IEP in effect in her previous district.

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Laboratory Charter School v. M.R.S., 123 LRP 21938 (E.D. Pa. 2023).

That statement undercut the charter school's claim that it was unaware of the student's IEP for several months due to the parent's lack of communication and involvement.

A charter school denied FAPE to a middle schooler with a disruptive behavioral disorder by failing to ensure she had an IEP in place at the start of her fifth-grade year.

The court ordered the school to provide a full day of compensatory education for each day the student went without services.

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A.B. v. Smith, 83 IDELR 53 (4th Cir. 2023).

- An academically gifted teenager with dysgraphia earned B's and C's during his final year did not establish his need for a more restrictive placement.
- The parents were not entitled to reimbursement for their son's unilateral placement in a private special education school.
- The student met his IEP goals despite his failure to earn A's in any of his classes, two of which were advanced courses.

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A.B. v. Smith, 83 IDELR 53 (4th Cir. 2023).

The district relied on evaluative data about the student's relative strengths and weaknesses when developing his proposed IEP for the following school year.

An IEP offers FAPE if it would enable the student to make progress that is appropriate in light of his circumstances.

"An IEP need only be 'reasonable,' not 'ideal.'"

No violation!

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Lessons Learned

1

IEPs must address all educational needs. Teams must respond to lack of progress.

2

Services must be delivered in conformity with IEPs on the first day of school. No delays.

3

IDEA does not require the best or ideal education. It requires progress appropriate in light of a child's unique circumstance.

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Placement Decisions

- Made by the IEP team based on the unique needs of the student.
- Keep in mind the LRE mandate.
- Do not maintain a placement that is not successful.

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D.R. v. Redondo Beach Unified Sch. Dist., 82 IDELR 77 (9th Cir. 2022).

Grade-level performance is not the only factor in determining if a student received sufficient benefit in the general education classroom.

Whether a general education classroom was an appropriate setting for a child with autism depended, not on whether the student was meeting grade level standards, but on whether he was progressing toward the academic goals in his IEP.

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D.R. v. Redondo Beach Unified Sch. Dist., 82 IDELR 77 (9th Cir. 2022).

- Grade-level performance isn't the appropriate benchmark for all children with disabilities.
- "For children whose developmental disabilities preclude them from achieving at the same academic level as their non-disabled peers, the appropriate benchmark for measuring the academic benefits they receive is progress toward [their IEP goals]."
- Here, the student was making significant progress toward IEP goals.

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Knox County, TN v. M.Q., 82 IDELR 214 (6th Cir. 2023).

- A district's claim that a kindergartner with autism would achieve greater academic success in a self-contained classroom did not justify its failure to offer the child a full-time general education placement.
- The 6th Circuit held that the general education kindergarten class was the child's LRE.
- The district first must consider whether the services and supports can be provided in the general education setting.
- The court rejected this district's argument that the child needed too many supports to benefit from a general education placement.

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Knox County, TN v. M.Q., 82 IDELR 214 (6th Cir. 2023).

- It pointed out that the child had made good progress in an inclusion preschool program with the use of supplementary aids and services.
- The child's preschool teacher testified that he could work on all of his IEP goals in the general education classroom.
- As such, the court found that the district could modify the general education kindergarten class to accommodate the child's needs.
- "This conclusion survives even if it requires [the district] to exercise some creativity (e.g., by implementing co-teaching or introducing a paraprofessional to the classroom)."

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Killoran v. Westhampton Beach Union Free Sch. Dist., 123 LRP. 20863 2d Cir. 2023).

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- Neither a district's failure to modify its Regents-level curriculum nor its decision to place a high schooler with Down syndrome in a 12:1:1 special education program amounted to an IDEA violation.
- An IEP can be "appropriately ambitious" even if it doesn't conform to the general education curriculum or align with grade level standards.
- This district pointed out that the student took alternate assessments, read at a first-grade level, and had an IQ of 49.

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Killoran v. Westhampton Beach Union Free Sch. Dist., 123 LRP. 20863 2d Cir. 2023).

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- That evidence bolstered the district's argument that the student could not make satisfactory progress in general education classes.
- The district offered the student FAPE in the least restrictive environment.

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Lessons Learned

- 1

LRE is a mandate, not a privilege.
- 2

It is unique consideration for each student.
- 3

LRE must be determined in relation to the student's progress toward IEP goals.

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C.D. v. Atascadero Unified Sch. Dist., 83 IDELR 80 (C.D. Cal. 2023).

A district did not violate the IDEA when it suspended a 16-year-old boy with multiple disabilities for 22 days after he allegedly pushed his teacher into a wall twice.

Information about a student's actions before, during, and after a conduct code violation can shed light on whether his disabilities played a role in his behavior.

That's why districts should encourage staff to take detailed notes about the circumstances leading up to the infraction.

C.D. v. Atascadero Unified Sch. Dist., 83 IDELR 80 (C.D. Cal. 2023).

- In this case, school personnel described the conversations they had with the student when he repeatedly refused to leave an area they deemed unsafe due to nearby construction.
- Those conversations, along with details of the student's demeanor leading up to the incident, showed the student's conduct was not impulsive or the result of communication difficulties.
- The student's conduct was not a manifestation of his disabilities.

I.K. v. Manheim Township Sch. Dist., 83 IDELR 54 (3d Cir. 2023).

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- The student's August 2018 IEP stated that she had met her goals for reading comprehension, reading fluency, written expression, and math computation.
- The IEP included supports to address the student's behavioral issues, which included negative self-talk, anxiety, and difficulties with self-regulation.
- The student's behaviors not only persisted but expanded to include threats of self-harm.
- The district revised the student's IEP in October and November 2018 to address those behaviors. The revised IEPs called for daily communication logs with the parents about the student's behaviors, adult supervision at all times, a divider to separate the student from a "problematic" classmate, and an observation by a behavioral specialist.

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I.K. v. Manheim Township Sch. Dist., 83 IDELR 54 (3d Cir. 2023).

- The court determined that the district's efforts to address the student's behaviors were adequate.
- "Those problems were no doubt very troubling, but the [district] was not ignoring them."
- A district's "good-faith efforts" to address a third-grader's ongoing behavioral difficulties helped convince the 3d Circuit that the district provided the student FAPE.

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H.L. v. Tri-Valley Sch. Dist., 82 IDELR 229 (M.D. Pa. 2023).

- When a student persistently engages in behaviors that impede his learning, a district should conduct assessments, as needed, and reconvene the IEP team to consider modifying the student's IEP and behavioral interventions.
- This student's aggression, non-compliance, and disruptiveness continued over the course of several school years.

H.L. v. Tri-Valley Sch. Dist., 82 IDELR 229 (M.D. Pa. 2023).

- While the student's behavior persisted and declined, the district met its FAPE obligations by frequently reassessing the student, gathering relevant input, conducting an FBA, offering positive behavioral interventions and supports, and changing his IEP to meet his evolving needs.
- "Over and over again, the District modified [the student's] IEP to ensure it remained 'reasonably calculated to enable [him] to make progress appropriate in light of [his] circumstances.'"

Lessons Learned

- 1

Be responsive to challenging behavior.
- 2

Recognize that behavior is an educational need just like academics.
- 3

Remember the 4 Rs:
Reconvene
Review
Restrategize
Revise

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Shortened School Day

Typically a bad idea.

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Shortened School Day

- Starting point: Students with disabilities are entitled to the same school day as nondisabled students. *34 C.F.R. §300.17.*
- Vary the length of the school day BASED ON STUDENT NEEDS ONLY!
- Keep in mind that it is highly unlikely that high needs students will receive FAPE receiving less instruction than nondisabled students.

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Osseo Area Schs., Indep. Sch. Dist. No. 279, 81 IDELR 256 (D. Minn. 2022).

- A 15-year-old student was denied FAPE because her educational program was not sufficiently ambitious.
- When the student who experienced severe seizures throughout the morning transferred into the district, the district agreed that she would attend school from noon until 4:15 p.m. For middle school, the district's proposed IEP ended her school day at 3 p.m. because the school day ended at 2:40 p.m.
- The parents rejected the IEP, contended that the district should educate the student from noon until 6:30 p.m. The ALJ agreed, and ordered remedial instruction and required the district to provide instruction at home from 4:30 to 6 p.m. The district appealed.

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Osseo Area Schs., Indep. Sch. Dist. No. 279, 81 IDELR 256 (D. Minn. 2022).

- The District Court cited the *Andrew F.* standard that a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.
- The court agreed that the student made de minimis progress during a shortened school day. It also considered that the district categorically refused to provide services outside of regular working hours.
- Although the evidence showed the teen learned best in the afternoon and evening, her educational programming was "constrained by limitations imposed upon, and outside of, the IEP Team."

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Reynolds v. George County Sch. Dist., 81 IDELR 282 (S.D. Miss. 2022).

- The the student attended school for one hour a day, four days a week, and that he received all instruction and services in an administrative office.
- "[The student's] educational environment often consisted of him sitting in a chair for one hour a day, secluded from other children, still wearing his backpack, with little academic instruction, and the focus was on redirecting negative behaviors," the judge wrote.

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Reynolds v. George County Sch. Dist., 81 IDELR 282 (S.D. Miss. 2022).

- The Judge also cited progress reports stating that the student was unable to attempt certain IEP goals and was making little to no progress on others due to his escalating behavioral problems.
- Given the student's limited progress and IEP's failure to address the student's individual needs and the student's lack of appropriate progress, the court held that the district denied the student FAPE.

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Round Rock Indep. Sch. Dist. v. Amy M., 81 IDELR 286 (W.D. Tex. 2022).

- The court held that the district denied the student with migraine headaches FAPE and that the student's unilateral private placement was appropriate.
- Holding that the student's IEPs were not individualized to her needs, the District Court largely adopted a magistrate judge's finding that the district denied the student FAPE.

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Round Rock Indep. Sch. Dist. v. Amy M., 81 IDELR 286 (W.D. Tex. 2022).

- The doctors, the court noted, opined that the student should receive one-on-one services in the school library or have a shortened school day with home instruction. Nevertheless, the district "remained rigidly committed to scheduling [the student] for a full day of courses,
- Instead, she was eventually offered one-on-one tutoring in one subject, and was expected to attend regular classes if she wished to receive any further instruction or course credit opportunities.

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Lessons Learned

1

Students with disabilities have a right to a full school day.

2

It is appropriate in VERY limited circumstances.

3

Do NOT disconnect students from the learning environment.

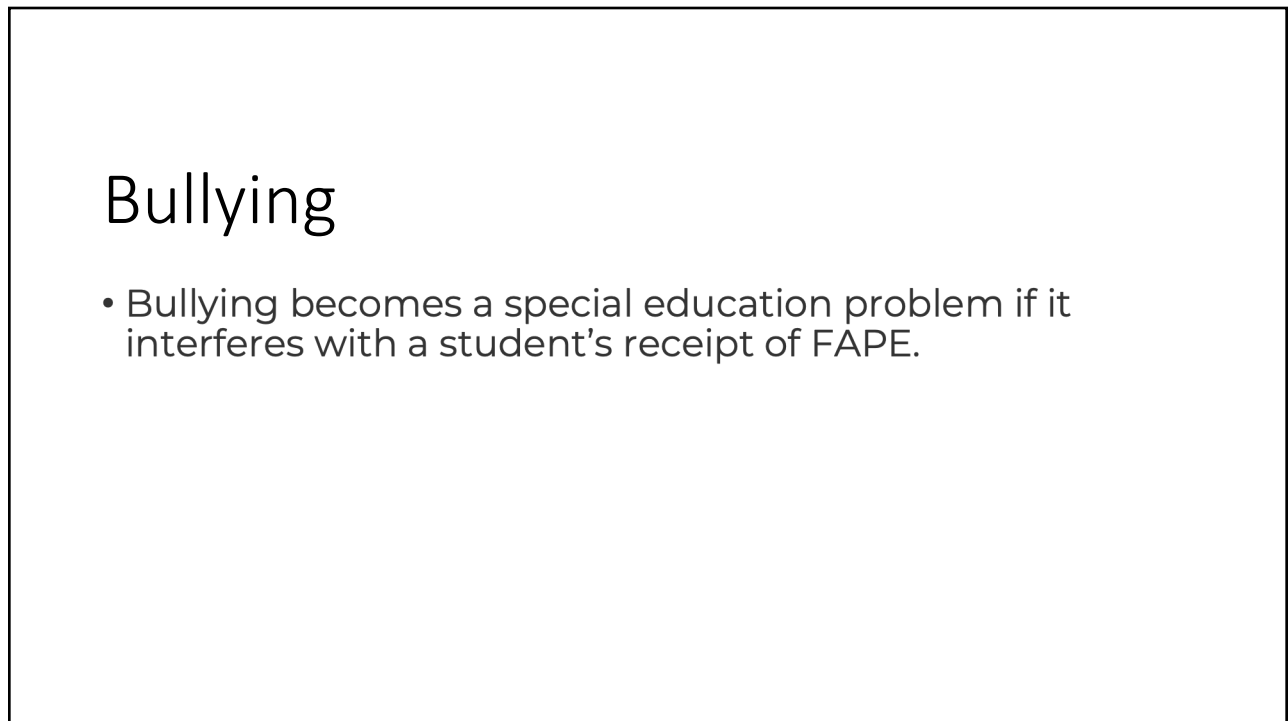
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D.M. v. East Allegheny Sch. Dist., 82 IDELR 171 (W.D. Pa. 2023).

- The parents of a ninth-grader with specific learning disabilities could sue a Pennsylvania district over its alleged failure to address the mental health issues their daughter developed as a result of peer bullying.
- If a district has information that peer bullying is affecting an IDEA-eligible student's performance, it must take steps to address the impact of that bullying.
- Such steps might include reevaluating the student to identify any changes in her needs, developing a safety plan, and providing counseling or other mental health supports.

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D.M. v. East Allegheny Sch. Dist., 82 IDELR 171 (W.D. Pa. 2023).

- This district responded to the student's frequent absences and declining grades by placing her in a cyber school program.
- Even if district staff meant well, the decision to remove the student instead of considering school-based supports raised questions about the district's response to the student's mental health needs.

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A.R. v. Cape Henlopen Sch. Dist., 123 LRP 17771 (D. Del. 2023).

- Regardless of whether a parent seeks money damages or equitable relief, a district should be prepared to show its response to peer harassment was appropriate.
- This means that the district must investigate all reported incidents, implement remedial measures, and take reasonable steps to prevent harassment from recurring.
- In this case, not only did this district address minor incidents of bullying that occurred between first and third grade, but it adopted additional safety measures following a severe incident in fourth grade.
- The social progress that the student made while that safety plan was in place helped the district demonstrate that the student received FAPE.

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Lessons Learned

1

DO NOT ignore bullying.

2

Investigate and put appropriate safeguards in place for the victim to continue to receive FAPE.

3

DO NOT change the placement of the victim in order to avoid contact with the offender.

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A square QR code with a small circle containing the letter 'b' in the center. To the right of the QR code is a large, solid brown shape that resembles a stylized letter 'b' or a checkmark.

Thank you for learning!

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