Today's Greatest Hits (and Misses): Due Process Hearing and Resolution Case Review

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No. 25: I'm Eighteen

No. 25: Return to Sender

Endrew F. v. Douglas Co. Sch. Dist.
137 S. Ct. 988 (2017)

- "a student offered an educational program providing 'merely more than *de minimis'* progress from year to year can hardly be said to have been offered an education at all."
- "The IDEA demands more. It demands an educational program reasonably calculated to enable a child to make **progress appropriate in light of the child's circumstances**."

Endrew F. on Remand
118 LRP 5674 (D. Colo. 2018)

- Parents – 10th Cir. said "close case" under old standard; and that SCOTUS decision
- School – IEP was not "ideal," but it was a reasonable calculation of educational progress
  - Objectives in reading comp., writing, math, communication and inter/intra-personal goals increased from prior IEPs
  - IEP addressed special and unique circumstances of Endrew's autism, ADHD, behaviors, sensory needs

Endrew F. on Remand
118 LRP 5674 (D. Colo. 2018)

- In other words, "appropriately ambitious in light of his circumstances"
- Court
  - Previously ruled "minimal progress"
  - Small IEP changes = "some educational benefit"
  - Progress was "minimal at best"

Endrew F. on Remand
118 LRP 5674 (D. Colo. 2018)

"*The District's inability to develop a formal plan or properly address Plaintiff's behaviors . . . impact the assessment of whether [IEP] it offered to [Endrew] was or was not reasonably calculated to enable him to make progress appropriate in light of his circumstances.*

Endrew F. v. Douglas Cty. Sch. Dist.
118 LRP 5674 (D. Colo. 2018)

- "The District's inability to properly address Petitioner's behaviors that, in turn, negatively impacted his ability to make progress on his educational and functional goals, also cuts against the reasonableness of the April 2010 IEP."
- IEP was not reasonably calculated to enable E.F. to make progress, even in light of unique circumstances
- Settled for $1.3 million (fees & tuition reimbursement)

No. 24: Hangin' on the Telephone

Brevard (FL) Pub. Sch.

70 IDELR 163 (OCR 2017)

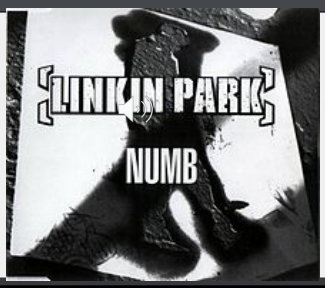
- IEP of a student with a disability provided that he be allowed to use his personal cell phone to take pictures of notes on the classroom board
  - Also provided copies of notes
- After IEP was implemented, there were a number of disciplinary issues related to the cell phone use
  - Issues persisted despite discipline

Brevard (FL) Pub. Sch.

70 IDELR 163 (OCR 2017)

- Several teachers deviated from the IEP and prohibited the student from bringing the cellphone into class
- Parents filed a complaint with OCR alleging a denial of FAPE from failure to implement IEP
- OCR: Failure to implement the provisions of an IEP may deny the student a FAPE
  - Did not determine if student was denied FAPE as the district came to a resolution agreement on the issue

No. 23: Numb



Connecticut Technical High Sch. Sys.
118 LRP 17346 (Conn. SEA 2018)

- Student with ADHD, depression, and anxiety faced discipline after adding liquid Novocain numbing cream to his math teacher's straw
- Teacher reported the issue to school administrators who launched an investigation into the incident
- Student admitted he gave another tube of the gel to a different student
  - Also admitted that he and other students used the cream at lunch time because the numbing effect felt "funny"

Connecticut Technical High Sch. Sys.
118 LRP 17346 (Conn. SEA 2018)

- Student suspended 10 days and was recommended for expulsion
- MDR did not find that there was a pattern of misbehavior prior to the incident
  - Further found the behavior was not directly or substantially related to the student's disability and the student's IEP was implemented properly
- Parents took issue with the MDR findings and brought a due process challenge

Connecticut Technical High Sch. Sys.
118 LRP 17346 (Conn. SEA 2018)

- Parents relied on testimony from an expert indicating that the student's behavior was a result of low self-esteem affected by his disability
- H.O.: Ruled for school; MDR decision correct
  - "Behavior caused by low self-esteem which has resulted from a disability is legally insufficient to support a finding that the behavior is a manifestation of a student's disability."
  - Pattern of misconduct is necessary, yet absent here

No. 22: Kids See Ghosts

Bonsall Unified Sch. Dist. v. Richard C.
56 NDLR 135 (S.D. Cal. 2018)

- School district sought to overturn an administrative decision requiring reimbursement for the private placement of a former student
- Dispute centered around the education of a 10 year old girl with behavioral and emotional issues
- Student exhibited serious symptoms including defiance, impulsivity, shouting, screaming, anxiety, biting, hitting, scratching, and destroying property
- Also reported seeing ghosts in her home, school, and playground

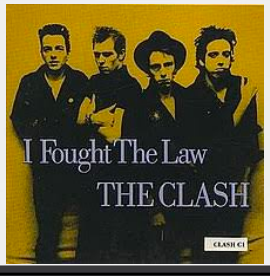
Bonsall Unified Sch. Dist. v. Richard C.
56 NDLR 135 (S.D. Cal. 2018)

- Behavior in kindergarten and first grade was violent and disruptive
  - Defiance, impulsivity, shouting, screaming, anxiety, biting, hitting, scratching, and destroying property
- Second grade placement involved instruction in the general education setting 95% of the time
  - Behavior issues persisted in second grade and culminated when the student tried to stab someone with a screwdriver, tried to stab someone with a pencil, stabbed herself, and started a fire

Bonsall Unified Sch. Dist. v. Richard C.
56 NDLR 135 (S.D. Cal. 2018)

- Despite these issues, a similar placement was offered for third grade
  - Soon after, parents placed student in private school
- Administrative hearing resulted in district being required to pay private placement tuition
- District appealed in court, and parents brought additional counterclaims the district sought to have dismissed
  - Counterclaims permitted

No. 21: I Fought The Law



Meekins v. Cleveland Cty. Bd. of Ed.
118 LRP 22863 (W.D.N.C. 2018)

- Parents of a child with autism and anxiety brought claims alleging a denial of FAPE under Section 504, excessive force, negligent infliction of emotional distress, and negligence
- Student's IEP contained a detailed Behavioral Intervention Plan (BIP) that provided the mother should be called if behavior issues arise
  - BIP specifically stated that police officers should only be called if the student's safety was in danger
  - Specific that no male should engage in restraint of or touch the student

Meekins v. Cleveland Cty. Bd. of Ed.
118 LRP 22863 (W.D.N.C. 2018)

- After difficulties in her morning class, the student asked her teacher if she could call her mother
  - Conflict ensued after teacher denied the request
- Student tried exiting the classroom, and was blocked by a teacher and aide who sought help
- Assistant principal and Officer Davis (SRO) responded to the classroom
  - Asst. Principal suggested a move to a different room, and the student declined before things turned violent

Meekins v. Cleveland Cty. Bd. of Ed.
118 LRP 22863 (W.D.N.C. 2018)

- Officer Davis grabbed at the student, who struggled with him, and then shoved her into another room and onto the floor. As the student attempted to get up from the floor, the officer pushed her back down, got on top of her, and attempted to handcuff the student. The student resisted and struggled
  - "Officer Davis punched [her] face. Officer Davis then placed his hand on [her] neck and proceeded to punch her again and again."
- Struggle continued as the officer continued striking the student, and twice administered pepper spray
  - "No one tried to stop the attack."
- When paramedics arrived, the student was on the floor bloodied, hysterical, and handcuffed

Meekins v. Cleveland Cty. Bd. of Ed.
118 LRP 22863 (W.D.N.C. 2018)

- "The weekend following the attack, Officer Davis was notified he was going to be taken out of [the school] for unspecified reasons. Less than a month later, Davis was reinstated as a school resource officer at [the school]."
- After removing the student from the school, the parents filed the above mentioned claims in federal court
- Court dismissed claims
  - Required exhaustion for IDEA claims
  - Declined to hold school liable for SRO's conduct on constitutional claim
  - Declined to exert supplemental jurisdiction over state claims

No. 20: If I Die Young

Weiser v. Elizabethtown Area Sch. Dist.,
56 NDLR 170 (E.D. Pa. 2018)

- Student with autism and ADHD was fatally struck by a vehicle as he walked home from school
- IEP for the year did not include any services to assist him in getting to or from school
- Parents of the deceased brought suit against the student's school district, alleging that the district failed to meet their obligations under the ADA and Section 504 of the Rehabilitation Act when it did not provide transportation service

Weiser v. Elizabethtown Area Sch. Dist.,
56 NDLR 170 (E.D. Pa. 2018)

- District sought dismissal arguing that the parents had an opportunity under the IDEA to raise concerns regarding the IEP in administrative due process hearings.
  - Failure to exhaust these administrative remedies under the IDEA barred them from bringing suit under the ADA and Rehabilitation Act
- Parents: Exhaustion unnecessary because its futile
- Court: Current factual scenario was exactly the type of extraordinary context contemplated when the futility exception was created

No. 19: Put Me in Coach

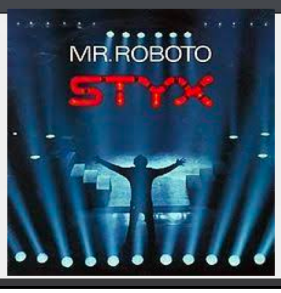
Brown v. Elk Grove Unified Sch. Dist.,
71 IDELR 163 (E.D. Cal. 2018)

- A district's attempt to have claims against it dismissed failed as the student sufficiently plead claims of disability discrimination associated with high school basketball
  - Due to the preliminary nature of the district's motion to dismiss, the court was not evaluating the merits of the complaint
  - Rather, Court considered whether or not the plaintiffs sufficiently plead the elements of the complaint
- Claims arose after a district found a student was not emotionally fit to play varsity athletics

Brown v. Elk Grove Unified Sch. Dist., 71 IDELR 163 (E.D. Cal. 2018)

- To establish discrimination on the basis of disability, the student needed to demonstrate that:
  - He had a qualifying disability;
  - He was entitled to participate in basketball;
  - He was excluded from varsity basketball;
  - His exclusion was based on his disability.
- Court: As alleged, the facts amounted to a showing of the requisite elements and the case was permitted to proceed

No. 18: Mr. Roboto



District of Columbia Pub. Sch. 118 LRP 6333 (D.C. SEA 2018)

- Parents pursued a due process complaint alleging that the district denied the student FAPE because the IEP and placement was not suitably restrictive
- The student had a pattern of very serious behavioral issues
  - Property destruction
  - Random attacks on peers
  - Disrespect towards staff
- Although behavior gradually became less severe, issues flared when he was being re-evaluated for IDEA services

District of Columbia Pub. Sch.
118 LRP 6333 (D.C. SEA 2018)

- On one day of observation, the "student got on top of a radiator at school threatening to jump out the window and make a 'devil robot' to kill everyone"
- Student was "far below" grade level in academic performance
- H.O.: Although parents have prima facie case, district rebutted it with documentation of its IEP considerations and revisions
  - Setting was increasingly restrictive, and behavior was improving
  - While the student's progress was dissatisfactory, the IEP was reasonably calculated to allow progress in light of the child's circumstances
  - Not only was IEP adequate, but it was implemented in a satisfactory manner

No. 17: Body Language

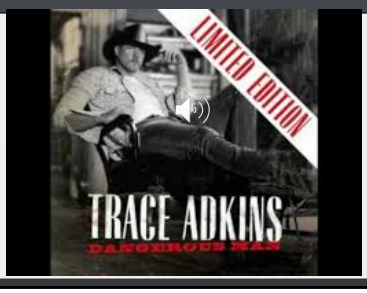
Cordero v. Picayune Sch. Dist.
118 LRP 27735 (S.D. Miss. 2018)

- Mother and two sons diagnosed with a condition causing hearing issues
  - Mother is deaf
  - Both students hard of hearing
- Family primarily communicates in ASL
- Brought suit in district court alleging violations of the ADA and Section 504, after the school district did not follow mother's recommendation to implement ASL services in the students' IEPs

Cordero v. Picayune Sch. Dist.
118 LRP 27735 (S.D. Miss. 2018)

- District argued that the mother's claims were precluded under the IDEA, as she failed to exhaust her administrative remedies
- Court: Under *Fry* exhaustion is required when the gravamen of the complaint seeks redress for a school's failure to provide FAPE
  - Here, because the mother alleged a loss of educational benefits, and the suit was the culmination of years of efforts to see a change to the student's educational services, the suit sought redress for a denial of FAPE
- Dismissed claims for failure to exhaust

No. 16: Fightin' Words



Vilonia Sch. Dist.
72 IDELR 136 (Ark. SEA 2018)

- Student, 15-year old male, eligible for IDA services as an individual with TBI
  - Behaviorally, the student struggled with respectfully interacting with school staff and with work avoidance
- On March 1, 2018, the principal of the school the student attended was informed of a threatening social media post from the student
  - Post depicted the student holding a gun of some type, with a message that read "I love it when they run."

Vilonia Sch. Dist.
72 IDELR 136 (Ark. SEA 2018)

- Principal notified the local police, who confronted the student about the message
  - Student indicated that the image depicted an airsoft gun, that he was not serious, and did not intend to carry out any threats
- The next day, additional audio clips and social media posts emerged, in which the student made further threatening statements and referred to committing suicide

Vilonia Sch. Dist.
72 IDELR 136 (Ark. SEA 2018)

- In light of this behavior, the district recommended the student be expelled and sought to place him in an IAES
- Parents filed complaint challenging placement in an IAES, arguing that the student did not qualify for such a placement under the IDEA
- District: Student's removal justified based upon the posts and statements

Vilonia Sch. Dist.
72 IDELR 136 (Ark. SEA 2018)

- H.O.: IDEA allows for a student to be removed to an IAES for not more than 45 school days without regard to whether the behavior is a manifestation of the student's disability if...
  - the child brings a weapon to school;
  - inflicts serious bodily injury on another person at school; or
  - knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function.

Vilonia Sch. Dist.
72 IDELR 136 (Ark. SEA 2018)

- H.O.: Student's behavior did not fall under any of the provisions
  - Social media posts were not directed at any specific individuals, or the school itself, and the student's behavior was likely a cry for help
- The hearing officer determined the student was not dangerous to himself or others, and the district did not have the authority to remove the student to an IAES following a 10-day suspension

No. 15: One is the Loneliest Number

A.T. v. Dry Creek Joint Sch. Dist.
118 LRP 26788 (E.D. Cal. 2018)

- Parents of a student with bipolar disorder and ADHD survived summary judgment on claims that a district violated their son's rights through excessive use of restraint
- Child's IEP authorized "therapeutic containment" in situations when "external controls are unsuccessful and a student's behavior is escalating to such a degree that there is a clear and present danger of bodily harm to self or others."
  - Such restraint was only to be used when it was clear that no other less restrictive intervention would be effective

A.T. v. Dry Creek Joint Sch. Dist.
118 LRP 26788 (E.D. Cal. 2018)

- Restraint was defined as placing the student on the floor and holding him down until he regained control
- IEP required notification of the student's parents on each use of restraint
- Over the three years after the operative restraint provisions were incorporated, the student was restrained and secluded 112 times
  - Many of which went unreported to the parents

A.T. v. Dry Creek Joint Sch. Dist.
118 LRP 26788 (E.D. Cal. 2018)

- Court: Without deciding the truth of the allegations, the number of uses of restraint was factually sufficient to support the claim that the district infringed upon the student's right to be free from unwarranted or unreasonable seizure
- Claims bolstered by fact that parents were not informed of the uses

No. 14: Rude

Pea Ridge School District
54 NDLR 68 (DOJ 2016)

- An Arkansas district was required to retrain staff, revise and implement new policies after a DOJ investigation into alleged disability discrimination
- Investigation began after a school district barred three students from school and extracurricular activities until an HIV test was administered on each, with the results returned to the school
  - District took this action after learning that a family member of the students was diagnosed with HIV

Pea Ridge School District
54 NDLR 68 (DOJ 2016)

- DOJ reminded the district that the protections of Title II of the ADA specifically prohibit discrimination against individuals because of a relationship or association with individuals who have a known disability
  - District's actions were directly related to the information regarding a family member having HIV, and ADA prohibits discrimination on basis of HIV status
  - That the district waited to readmit the students until they tested negative for the disease was a clear indication of the discriminatory nature of the action

No. 13: Another One Rides The Bus

McKenzie v. Talladega City Bd. of Ed., et al.,
69 IDELR 149 (N.D. Ala. 2017)

- Mother of a nonverbal student with severe disabilities brought constitutional claims against both the school district and the employees involved when her daughter was injured during a bus evacuation drill
- Driver of one of the district's special education buses was instructed to conduct a biennial bus evacuation drill
  - Plaintiff student was brought to the bus for the drill

McKenzie v. Talladega City Bd. of Ed., et al.,
69 IDELR 149 (N.D. Ala. 2017)

- Despite local rules requiring each driver and aide to have a written plan for the emergency evacuation of special education students prior to drills, none was prepared or in place
  - Additional safety equipment was not in place
- Student, who uses a wheelchair, is capable of walking short distances, so long as she has assistance at hand in the case that her legs give out

McKenzie v. Talladega City Bd. of Ed., et al.,
69 IDELR 149 (N.D. Ala. 2017)

- Once on the bus, the student was required to leave her wheelchair and walk towards the back of the bus to the emergency escape
- Once at the emergency escape, attempts to assist the student in exiting the bus safely failed
- Student fell from the bus onto the ground
  - Student was required to walk back to the classroom, crying the entire time
  - Subsequent ER visit showed her wrist was broken in three places, a bone in the neck was fractured, and that she chipped a bone in her back

McKenzie v. Talladega City Bd. of Ed., et al.,
69 IDELR 149 (N.D. Ala. 2017)

- Court: While the employees in question may have acted without reasonable care, the court noted that the actions were "a far cry from a coach intentionally striking a student in the eye with a metal weight lock" or metal cane, referencing factual scenarios that met the threshold for "conscience-shocking" behavior.
- Proper forum was state tort claim

No. 12: Shiftwork

Douglas Co. (Roseburg) Sch. Dist. 4
117 LRP 28087 (Or. SEA 2017)

- 12-year old, non-verbal student with significant academic and behavior issues
- District began transitioning the student from a home placement and into the school setting
- Student's attendance was poor
  - Only tolerated 45-90 minutes of school time or would refuse to go altogether
- IEP provided for most learning to take place in an intensive one-on-one setting within a self-contained classroom

Douglas Co. (Roseburg) Sch. Dist. 4
117 LRP 28087 (Or. SEA 2017)

- Successful implementation of the IEP depended on the employment of a skilled and qualified staff
- District intended to hire a paraeducator to operate as the student's 1:1 aide
  - Faced "obstacle after obstacle" in an effort to hire staff
- Open positions were advertised continuously, and the District offered employment positions to several applicants

Douglas Co. (Roseburg) Sch. Dist. 4
117 LRP 28087 (Or. SEA 2017)

- Several employment offers were made, but fell through
  - Some were unable to pass drug tests required by District policy
  - Others were unreliable or refused the position after learning about the student's aggressive behaviors
- District's behavior specialist assigned to student
  - Became frustrated with the student's attendance and disputes with the parents about services provided
    - Resigned despite the district's offer to double her salary

Douglas Co. (Roseburg) Sch. Dist. 4
117 LRP 28087 (Or. SEA 2017)

- No staff remained to provide services
  - Student was unable to return after winter break
  - Not provided services for several months
- Parents filed complaint alleging the district was failing to meet obligations
- H.O.: District failed to meet its obligations under the IDEA and unlawfully denied the student FAPE

No. 11: Runaway

Oakland Unified Sch. Dist.
118 LRP 2954 (Cal. SEA 2018)

- 9 year old student with violent tantrums exhibited serious behavioral issues
  - When frustrated, the student would cry, make noises, and crawl around the floor pretending to be an animal
- Student would frequently elope, escaping from the classroom an average of eleven times a week for over five hours outside of the classroom a day
  - Student wandered the halls and playground yelling and screaming, and refused to attend special education services

Oakland Unified Sch. Dist.
118 LRP 2954 (Cal. SEA 2018)

- Student's parent was not supportive of the district in their attempts to mitigate the behavior
- IEP Team revised the students placement to a more intensive setting
- Parent objected, and filed a complaint to have the IEP team's decision overturned

Oakland Unified Sch. Dist.
118 LRP 2954 (Cal. SEA 2018)

- H.O.: Evidence established that without a more restrictive placement such as that contemplated by the IEP team, the student would be unlikely to make educational progress
  - Took note of the district staff's diligent attempts to reduce the student's behavior and implement effective plans to provide educational benefit
- District may implement the IEP without parental consent as it was the LRE

No. 10: Mean

Bowe v. Eau Claire Area Sch. Dist.
71 IDELR 168 (W.D. Wis. 2018)

- Parents of a student with Asperger's Syndrome brought suit alleging that a district's failure to more severely punish those bullying their son constituted deliberate indifference violating the ADA and Section 504
- Student was a victim in several bullying incidents
  - Peers directed derogatory and demeaning insults towards the student, often in language that was clearly inappropriate
  - Student's house was also vandalized in acts of bullying
    - Bag of feces was left at the home
    - On another occasion the house was egged

Bowe v. Eau Claire Area Sch. Dist.
71 IDELR 168 (W.D. Wis. 2018)

- Over the course of the student's time at the district, the student and his parents complained of 30 discrete acts of bullying
- "Defendants investigated each complaint, which generally involved interviewing the students involved, and sometimes the investigation included referring the matter to police or speaking to the classroom teacher."

Bowe v. Eau Claire Area Sch. Dist.
71 IDELR 168 (W.D. Wis. 2018)

- If the district determined that a student behaved inappropriately, it would call the student's parents or implement corrective action
  - Corrective action ranged from counseling, suspension, to referral for criminal charges
- Court: District "certainly favored counseling" rather than more punitive forms of punishment... But...
  - The counseling appeared effective in many instances
  - Bullying incidents alleged included a large number of schoolmates, rather than the repeated actions of a select few

Bowe v. Eau Claire Area Sch. Dist.
71 IDELR 168 (W.D. Wis. 2018)

- Court: "Continued counseling of a handful of students after numerous instances of bullying might be clearly unreasonable, but the evidence does not indicate that's what happened here."
- While the court felt that the district should not be "particularly proud of its response to the problem", the district did not act with deliberate indifference. Therefore, the court ruled for the district.

No. 9: Mo' Money Mo' Problems

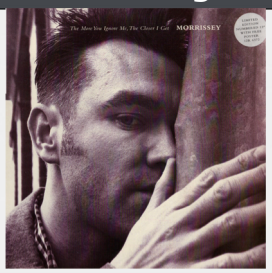
T.B. v. San Diego Unified Sch. Dist.
71 IDELR 195 (S.D. Cal. 2018)

- Despite prevailing in IDEA proceedings, parents were unable to recover the full $2 million in attorney fees they requested
- Parents brought eighteen claims against the district
  - Won three claims that centered around the district's refusal to accommodate G-tube feedings
- Court: Must take into account a parent's degree of success in calculating an appropriate fee award

T.B. v. San Diego Unified Sch. Dist.
71 IDELR 195 (S.D. Cal. 2018)

- Court: Lack of success on a number of claims justified a reduction of the reward
- District: 84% reduction is appropriate
  - Equivalent to the proportion of claims won
- Court: While only three claims were successful, the claims were necessary to secure an IEP that would allow the student to safely attend school with his peers
  - 50% reduction was found to be appropriate

No. 8: The More You Ignore Me, the Closer I get



St. Louis City Sch. Dist.
118 LRP 4657 (Mo. SEA 2018)

- Kindergarten student began living with grandmother, who requested IDEA evaluation from his school
- School held an informal meeting and determined that they did not have enough information about the student because he was still transitioning into the district
  - Never reconvened to address the student or refer him for special education services

St. Louis City Sch. Dist.
118 LRP 4657 (Mo. SEA 2018)

- During the student's enrollment in the district, he exhibited extremely troubling behavior on a regular basis
  - In one day, the student threatened a classmate with a rock, threw a toy at a student, tried to run away from school, and masturbated in class
    - Behaviors not unusual for student
  - Student threatened to kill a staff member with a knife located in a teacher's desk
  - Student used profanity, hit others with belts, and threw rocks at classmates

St. Louis City Sch. Dist.
118 LRP 4657 (Mo. SEA 2018)

- IDEA evaluation requested in September 2014
  - School did not convene the initial IDEA eligibility conference until April of 2015
- IEP team: Student's academic performance kept him from meeting the standards for intellectual disability, and that the team lacked sufficient information to warrant a diagnosis of ED
  - Although it noted the student's diagnosis of ADHD, it did not assess the student for OHI

St. Louis City Sch. Dist.
118 LRP 4657 (Mo. SEA 2018)

- Behavior continued into first grade
  - Several disciplinary suspensions
  - Unprovoked, the student walked up to another student and punched her several times in the face and head
  - On several instances, the student threw a chair at classmates and staff
  - Elopement was persistent
  - One morning the student stole his teacher's lunch, ran away from the classroom, and ate it

St. Louis City Sch. Dist.
118 LRP 4657 (Mo. SEA 2018)

- Despite these issues, the district still did not find the student eligible for special education services
- Grandmother filed complaint, alleging the district violated the IDEA by not providing special education services to the student
- IHO: district failed to meet its child find obligations, and in doing so denied FAPE
  - Even if he couldn't be verified under ED, should have been verified under OHI after ADHD diagnosis

No. 7: Home Is Where The Heart Is

Phillips v. Morris Public Schools

71 IDELR 104 (E.D. Okla. 2018)

- Parents of a student with disability brought a due process complaint against a district
  - Complaint arose several months into the school year
- While gathering information to respond to the parent's complaint, the district determined that the family resided outside of the district
  - In Oklahoma, as in many states, residency is to be determined on a year-to-year basis

Phillips v. Morris Public Schools

71 IDELR 104 (E.D. Okla. 2018)

- District found the family to be residents when they first entered the school system ten years before
  - Had not reassessed that determination in any fashion
  - District failed to enact policies and procedures for residency determinations, although such policies and procedures were required under state law
    - District maintained a practice of accepting the address presented on a utility bill

Phillips v. Morris Public Schools
71 IDELR 104 (E.D. Okla. 2018)

- Court: Implications of state law were that the district was required to make residency determinations in a timely and orderly fashion
  - Against the spirit of state law and IDEA to allow residency to remain an open question to be challenged after a complaint alleging a failure to meet obligations under the IDEA
- Acceptance of student at beginning of year, and provision of IEP, made district responsible for the remainder of the school year

No. 6: Spoilin' For A Fight

J.R. v. Smith
70 IDELR 178 (D. Md. 2017)

- Parents alleged a district predetermined an IEP
- In a call before the meeting, the placement specialist told the parent to be "ready for a fight" with Mr. Moore, the chair of the IEP Team
  - Indicated that Mr. Moore was of the opinion that a public school specifically tailored to educate students with behavioral issues was the proper placement
    - Parents intent on private placement
- IEP determined a public placement was appropriate

J.R. v. Smith
70 IDELR 178 (D. Md. 2017)

- Court: While districts are prohibited from predetermining a student's placement, the members of the IEP team may naturally go into a meeting with some ideas or opinions
  - An open mind is not the same as a blank mind
- Evidence demonstrated the IEP meeting was full of robust discussion
  - Majority of team agreed with placement
- Placement reasonably calculated to provide FAPE

No. 5: Liability

Crofts v. Issaquah School District
72 IDELR 15 (W.D. Wash. 2018)

- Parents of a student with disabilities brought a federal IDEA complaint against a district after an ALJ found for the district in administrative proceedings
- Parents, who proceeded *pro se*, sought leave to amend their initial complaint to add three district employees to the suit in their individual capacities
- These individuals argued that they could not be added to the suit as individuals under the IDEA

Crofts v. Issaquah School District
72 IDELR 15 (W.D. Wash. 2018)

- Court: 9th U.S. Circuit Court of Appeals has not addressed the issue
  - Turned to the framework and language of the IDEA
- Obligations of the IDEA clearly run to the LEA in recipient of federal funds
  - No provisions discuss claims against third parties or individual employees
- Case law overwhelmingly against individual liability
- Motion to amend denied; IDEA doesn't provide for individual liability

No. 4: You're So Vain

Trujillo v. Sacramento City Sch. Dist.
57 NDLR 9 (E.D. Cal. 2018)

- Mother of a student diagnosed with TBI alleged she was retaliated against for advocating on behalf of her son
- Issues arose when the mother brought the student to school and notified office staff that he may be drowsy from new sleep medication that his doctor prescribed
- By noon, school staff determined that the student needed to be sent home

Trujillo v. Sacramento City Sch. Dist.
57 NDLR 9 (E.D. Cal. 2018)

- Took over an hour for the mother to return to the school and pick him up
- After the student was sent home, his 1:1 aide made a complaint to CPS regarding the incident, allegedly on the grounds that the mother overmedicated the student and brought him to school while sick
- During the school year, District also sent three letters stating that the student was truant

Trujillo v. Sacramento City Sch. Dist.
57 NDLR 9 (E.D. Cal. 2018)

- According to the mother, the complaint to CPS and the truancy letters sent to her home were retaliation against her for speaking out at a district school board meeting
  - At this meeting, she criticized "corruption in the education system as evidenced by overly generous benefits packets."
- Court: Mother's statements at the board meeting did not constitute protected activity under the IDEA or Section 504
  - Even if her activity was protected the alleged retaliatory conduct was insufficiently linked to the activity to make out a claim of retaliation

No. 3: It Takes Two

K.M. v. Tehachapi Unified Sch. Dist.
57 NDLR 66 (E.D. Cal. 2018)

- Parents of a student with autism requested that their child's district permit an insurance-funded ABA therapist to accompany their child at school
- After a contentious IEP development process, IEP team proposed an IEP that provided special education services through means other than the requested accommodation
- In response, the parents filed suit alleging the decision deprived K.M of equal access and constituted discrimination on the basis of disability in violation of Section 504 and the ADA
  - Complaint did not allege a denial of FAPE

K.M. v. Tehachapi Unified Sch. Dist.
57 NDLR 66 (E.D. Cal. 2018)

- District: Parent's suit is precluded by the exhaustion requirements of the IDEA
- Court: These claims are analogous to those in *Fry*
  - ABA therapist functional equivalent of the service-dog in *Fry*
  - Central tenet is that the medically prescribed treatment is not being accommodated to allow access to the school and its programming
  - Exhaustion is not required

No. 2: Shut Up and Dance

In re: Student with a Disability
72 IDELR 137 (S.D. SEA 2018)

- District unilaterally drafted and implemented a behavior contract created to supplement the behavior interventions in a student's IEP
- Behavior plan included several specific verbal and non verbal reinforcements for behavior that the teacher was supposed to utilize continuously
  - Classroom teacher inconsistently used rewards
    - Concerned with giving student too much attention
    - Would sometimes allow the student to pick the music played during class announcements

In re: Student with a Disability
72 IDELR 137 (S.D. SEA 2018)

- After behavior issues persisted with the student, the district created an in-school/out-of-school suspension plan that governed many of the behaviors contemplated by the interventions in the student's IEP
- Parents filed a complaint arguing that the district's actions deprived them of meaningful opportunity to participate in the IEP process

In re: Student with a Disability
72 IDELR 137 (S.D. SEA 2018)

- H.O.: Ruled for parents.
- IDEA's requirement to allow parental participation in the IEP Team process included more than simply allowing them to attend the IEP meetings
  - Creation of a suspension plan and the implementation of a behavior contract, effectively were revisions or amendments to the student's IEP
- Providing the parents copies of the plans was insufficient to allow them to meaningfully monitor and enforce the IEP as envisioned by the IDEA

No. 1: The Sound of Silence

Howard G. v. State of Hawaii
72 IDELR 59 (D. Haw. 2018)

- After extensive disputes over a student's education, the Hawaii ED instructed the student's service providers not to communicate with the parents
  - Parents left unable to access crucial information about the student's performance and evaluations
  - Withdrew student, put in private placement, and brought claims for reimbursement

Howard G. v. State of Hawaii
72 IDELR 59 (D. Haw. 2018)

- H.O.: Parents were excluded from meaningful participation in the IEP process, denying the student access to FAPE
- Required reimbursement, as it was determined the parents successfully demonstrated:
  - Student was denied FAPE;
  - Private program was appropriate; and
  - The equities favor reimbursement
- Court: Upheld Hearing Officer's decision

Questions?

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