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ELA Notes

A quarterly publication by the Education Law Association

President's Message

From the keynote speakers to the sunshine and sailboats, I think all would agree that we had another successful ELA conference. A special shout-out to Lynn Rossi Scott, Mark Paige, KB Melear, Cate Smith, Pam Hardy, and Pat Petrusky for organizing an exceptional conference.

Contents

It was inspiring to observe so many of our ELA members contributing to the conference in different and important ways. Lois Berlin and Jon Anderson raised over $2400 for our technology fund through the raffle and even more through the Legacy Fund. Did you see that Lynn Rossi Scott recognized about 100 volunteers during her address? This goodwill and collaborative spirit among our members has continued after the conference closed. Just to provide a few examples of many, only one week after the conference, two members proposed a new book focused on legal issues for classroom teachers. And, the co-chairs of the technology committee are busy developing plans for our 2018 webinar series. At the same time, the editors of the *Yearbook of Education Law* were gearing up for another round (this is Charlie Russo's 24th year on the book!). I have countless other examples; our members are truly extraordinary.

As I noted at the conference, one of the things that I always enjoy the most about the ELA conference, and what keeps me coming back every year, are the people. Not only are we a welcoming and inviting bunch, but where else can you find the kind of interdisciplinary dialogue that takes place in ELA? I find it tremendously rewarding to be in sessions with a lawyer who litigated an education law case, a professor who examined the matter in a recent study, and an administrator who discusses the implications for school districts. More importantly, these discussions continue throughout the year in many different formats and contexts. Like many of you, I have made many good friends and contacts through this organization whom I continue to rely on for their expertise. Thank you, Julie Mead and Martha McCarthy, for introducing me to the ELA family!

This past year, under Lynn's extraordinary leadership, we celebrated the good that we do. Very much related to this theme, I want to share with others the good that this organization does and why education law matters. For example, there are others beyond our traditional three constituency groups who also need to be legally literate and could benefit from the good that we do. I believe that teachers, coaches, school social workers, and those working in student affairs at universities would find value in ELA.

My goal this year is to continue to demonstrate to new constituency groups why education law matters, why becoming legally literate matters, and most importantly, why ELA should matter to them. In order to achieve this goal, we have several members working on improving the resources we offer our members. The publications committee is helping to facilitate several new books, and Cate has posted new education law videos produced by our very own Dave Schimmel. In addition, ELA has created a "Class Pass" for member school law instructors' students to be able to access our materials. Finally, I appreciate the membership and professional partnership committees for suggesting innovative ways to spread legal literacy to new and our existing constituency groups.

Next year's conference is in Cleveland. I am pleased to announce our conference co-chairs, Susan Bon and Joy Blanchard. The conference program committee (a.k.a. the Dream Team) will be Susan Clark, Cynthia Dieterich, Stephanie Klupinski, Annie Blankenship, and David Nguyen. KB Melear and Mark Paige, last year's co-chairs, have graciously agreed to be "of counsel." The dream team has already hit the ground running and have several exciting plans in the works. Stay tuned, and please do not hesitate to reach out to me (and your highly committed ELA board members) this year with new ideas.

Suzanne E. Eckes, J.D., Ph.D.
President

ELA Notes is a publication by and for ELA members. **Please send items for publication in *ELA Notes* by the first of the month preceding the publication date.** Manuscripts, correspondence, announcements, advertisements, and current events should be sent to Education Law Association, 2121 Euclid Avenue, LB46, Cleveland, OH 44115-2214. Phone: (216) 523-7377 Fax: (216) 687-5284 Email: ela@educationlaw.org www.educationlaw.org.

Please note that we reserve the right to edit or not publish submissions.

From the Executive Director

Education law matters.

Becoming legally literate matters.

Therefore, ELA matters.

Paraphrasing the above from President Eckes' inaugural message, we can readily agree that every professional in education should have a basic knowledge and understanding of legal issues. ELA is the only organization from which you can gain this impartial and practical information from a variety of experienced and expert professors, attorneys, administrators, and consultants. No other organization has our breadth of membership and the capacity to provide a variety of viewpoints through highly valued discussion and debate.

ELA provides relevant and necessary information in myriad ways, but I noted in a message last year the realization that even a few of those serving on our board of directors lacked complete knowledge of all the benefits of membership. We want everyone to take advantage of everything ELA has to offer you! To better communicate the details of all the benefits, we are working on an instruction manual to describe each one and offer additional how-to guidance. When completed, a copy of this document will be posted to the website and a print copy will be provided to new members.

In addition, although so much of our life is online, I believe we will have better retention of members if we create and provide a packet of printed information for our new members. This is something we ceased a few years ago, thinking that this means of communication was becoming irrelevant; however, recent inquiries and discussion is leading us to resume the practice and expand upon it for future reference.

We have also created a basic membership card to be sent after you renew your membership. This card will include your name and member number, ELA office contact information, and other pertinent information.

In both the new member packet and the membership card response we will include information for you to share with a colleague. Please share with someone why and how much ELA matters to you and suggest how increasing their own legal literacy through ELA will positively affect their professionalism.

By doing all of these things, we hope to show you how much we value you and solidify how much value you have in ELA.

Cate K. Smith, J.D., M.P.A.
Executive Director

See San Diego conference coverage on pages 5-7

Oldaker's significant accomplishments profiled in Alaskan publication

The Juneau Empire profiled longtime NOLPE and ELA member (since 1972) Lawrence Lee Oldaker in late December 2017 in a feature titled "Taking on Southern resistance and the KKK, Juneau educator integrated one of the first schools in the US." It explained how Oldaker helped integrate one of the first school systems in the Deep South and later moved to Alaska to help Alaska Native peoples in the University of Alaska system.

Read the article at: http://juneauempire.com/news/people-juneau/local/2017-12-23/taking-southern-resistance-and-kkk-juneau-educator-integrated, or http://bit.ly/2DpJ5CN.

Free admission for members to ELA's 2018 Spring Webinar Series

Mark your calendars now for the following webinars and watch your email, the member listserv, and the ELA online bookstore for complete information on these and additional titles.

Admission to each webinar is free for current members, $99 per computer for nonmembers.

February 9, 2018, 11:00 a.m. Eastern
School Choice in Public Education: An exploration of policy effects on choice and access
Presenters: Stephen Seedorf & Bradford Every

February 28, 2018, 3:00 p.m. Eastern
IEP Transition Plans: Age-Appropriate Assessments and Outcomes
Presenters: Elizabeth Watson and Bruce Bloom

March 1, 2018, 2:00 p.m. Eastern
Sexual Harassment & Assault in Higher Education: The Rights of the Accused
Presenters: Bill Thro and James Newberry

March 6, 2018, 1:00 p.m. Eastern
OCR 101—Navigating your way through an OCR complaint
Presenter: G. Anthony Brown

Welcome New and Rejoining Members

Shannon Adams - Martinsville, IN
Michella Alarid - Scottsdale, AZ
Rafael Alvarado - State College, PA (R)
Franca Dell'Olio - Los Angeles, CA
Keith Rollin Eakins - Edmond, OK
Tim Evanson - Carlsbad, CA
Therese Ellender - Opelousas, AL
Emma Everson - Bloomington, IN
Brody Faler - Portland, OR
Lauren Freed - Sagamore Beach, MA
Rahn Gatewood - Atlanta, GA
Jonathan Glater - Irvine, CA
Amy Goodson - Tallmadge, OH
Patty Himes - Stratford, CT
Romanus Igweonu - Graniteville, VT
Nao Imagawa - Mito, Japan
Maria Lewis - State College, PA (R)
Linell Lukesh - Philadelphia, PA
David Mayrowetz - Chicago, IL
Michelle Mbekeani-Wiley - Chicago, IL
Stacie McClaim - Carson, CA
Kristen Moorehead - Indianapolis, IN
Ryan Niemeyer - Oxford, MS (R)
David Norman - Lisle, AL
John Pomeroy - San Gabriel, CA
Chad Ranney - Indianapolis, IN
Andrea Schulewitch - Rancho Cucamonga, CA
Tracy Schneider - Williamsburg, VA (R)
Lisa Settle - Memphis, TN
Christopher Thomas - Phoenix, AZ (R)
Ray Today - Silver Springs, MD
Jacklyn Williams - Ontario, CA
Susan Williams - Richmond, VA
Brooke Worland - Franklin, IN

Mark your calendars and plan to participate in the 2018 ELA Conference in Cleveland

It's not too early to start planning for this year's annual conference, November 7-10, 2018 at the substantially remodeled Cleveland Downtown Marriott Key Center in Cleveland, Ohio, site of the 2015 conference. Because it is home to ELA headquarters, Cleveland offers exciting partnership opportunities that will enhance the experience for attendees.

For those who wish to present papers, the submission form is posted now at the ELA website, with a deadline of March 1.

Registration and hotel registration information should be available by April.

Night skyline of Cleveland, showcasing the Rock and Roll Hall of Fame and Museum on Lake Erie.

ELA Leadership Profile: Suzanne E. Eckes

"Energetic" and "positive" are two adjectives well suited to ELA's president for 2018, Suzanne Eckes. One way she displayed her energy was by leading the 6:30 a.m. Thursday Fun Run at the San Diego conference—her idea in the first place, as were the special T-shirts created for it—followed closely by taking the podium with an enthusiastic smile in her new role with ELA (shown above).

Suzanne is professor in the Educational Leadership and Policy Studies Department at Indiana University. Prior to joining the faculty, she was a public high school French teacher and an attorney. She continues to work as an expert witness in education-related litigation.

In addition to publishing over 150 education law-related articles in a wide variety of journals, she has had long service with ELA's School Law Reporter and as a legal contributor to the National Association of Secondary School Principals' Principal Leadership magazine.

Her many stints as author, coeditor or editor of ELA publications include work on *Contemporary Legal Issues in Higher Education 3rd Edition* and *The Principal's Legal Handbook* (3rd-5th editions). She has also been a regular presenter and panel leader at annual conferences since joining ELA in 2001.

Suzanne's educational background includes a B.A. with a triple major from the University of Wisconsin, Ed.M. from Harvard University Graduate School of Education, and back to Wisconsin for her J.D. and Ph.D. She has also studied in France.

Like several others among ELA's leadership team, she is an avid runner. Also keeping her busy outside of her academic environment is supporting her 11-year-old son Ian's dreams of being nominated for the Rock and Roll Hall of Fame. He plays piano, guitar, ukulele, trumpet and can sing—very much unlike his parents, she admits, who "have a hard time finding middle C." If he is fortunate, though, he will have inherited plenty of his mom's intelligence, work ethic, and can-do attitude.

ELA Profile: Amy Dagley and David Dagley

If you're a reader of ELA periodicals and publications, you might notice that the Dagley name seems to crop up frequently. That's because the members of this father-daughter duo, Dave and Amy Dagley, are among the more active volunteers in the organization.

Both write for School Law Reporter and have served on multiple committees (Publications, Dissertation, Membership, Technology and Membership Services for Dave; Conference Proposals, Monograph and Dissertation for Amy). But perhaps their most spectacular—if thankless—work appears each year in the Legislation chapter of *The Yearbook of Education Law,* where a staggering number of new laws pertaining to education across the nation are gathered and reported. There have been over 900 citations in the chapter in recent years. Dave has done this task since 1999; Amy joined him officially in 2009, but helped with research for eight years before that.

Dave Dagley was a sixth-grade teacher, principal, assistant superintendent, superintendent, and school board attorney, before going into higher education. Currently Professor Emeritus at the University of Alabama, Dave's 100th dissertation student

Dave Dagley and Amy Dagley in academic garb, shown at Amy's graduation

successfully defended late last fall. He joined ELA's predecessor, NOLPE, in 1979, and served as a board member from 1999-2002. His other writing contributions have included a chapter on community issues in the most recent edition of *Contemporary Issues in Higher Education Law*.

He has been an ELA annual conference attendee and presenter for years.

"There are a lot of different levels of expertise among conference attendees, but members accept and support each other. I appreciate that attendees usually treat speakers with kindness," he said. "I don't think I've ever been to a session that I didn't learn at least something I could use: a new perspective; a new way of looking at a case or theory; or, challenging what I thought I knew."

Amy Dagley also entered higher education later, after serving as a high school English teacher and a union leader. Having received her Ph.D. from the University of Alabama in Tuscaloosa, she was an assistant professor at the University of Louisiana at Monroe and is now Assistant Professor at the University of Alabama at Birmingham.

She has regularly attended and presented at ELA conferences since 2009, saying of them: "While earning my Ph.D., I was determined to learn as much as I could about all aspects of educational leadership, so attending ELA was part of my learning experience. I attended my first ELA conference as a student and presented with Lawrence Lee Oldaker, who had acted as a surrogate father and mentor for many years when I lived in Alaska.

"When I attended my first conference I had no intention of continuing with the organization or creating a research agenda in school law, because I knew the challenges inherent in creating a career path similar to my father's. However, by the end of the first conference I was hooked!"

"Every session is a learning experience and the people are wonderful. I especially like how members are supportive of presenters, which is not often the case in other conferences, and politely ask questions and engage in debate rather than criticism."

Amy's son, Boone, is one of two grandchildren of Dave and Gayle Dagley, who have been married for 46 years and are parents of another daughter, Erin. The couple enjoy traveling, especially to New Mexico and Cobh, Ireland, as well as hiking and skiing.

CALL FOR PAPERS

EDUCATION LAW INTO PRACTICE REVISED AUTHOR GUIDELINES January 2018

Education Law Into Practice (ELIP) is a special section of *West's Education Law Reporter* (WELR) sponsored by the **Education Law Association**. The purpose of this special section is to publish short, practical pieces on topics in education law which are important to practitioners, scholars, and attorneys. The intent of this special section is to publish practical and useful checklists, charts, sample forms, model policies, sample memoranda, sample documents, procedural guidelines, and short articles that are thoroughly supported by citations to statutes and case law. All manuscripts are subject to a peer review process.

1. The manuscript should be sent to one of the co-editors via email, accompanied by a cover sheet that includes all authors' names, professional titles, affiliations, address, email, and telephone numbers. The manuscript must be prepared in Microsoft Word format following ELIP's *Guidelines for Final Manuscript Preparation*.
2. The manuscript may ***not*** be under consideration by any other publication.
3. The text of the manuscript should be in 12-point Times New Roman font, double spaced; footnotes should be in 10-point font, single spaced.
4. The manuscript must be prepared according to the guidelines of the latest edition of *The Bluebook: A Uniform System of Citation* using numbered footnotes. Parallel citations to *West's Education Law Reporter* are required, using the following format: 570 F.3d 775, 246 Ed. Law Rep. 638 (6th Cir. 2009). It is the authors' responsibility to make sure that all citations are correct and in the proper format.
5. The topic should be timely, significant, and practical and presented in a direct, concise, clear, and readable style.
6. The manuscript should add to the current literature on the topic.
7. The manuscript should include a concise, evaluative literature review with citations to any previous articles on the topic. Prior ELIP and WELR articles on the topic should be cited.
8. The manuscript should conclude with recommendations for practitioners or practical solutions.
9. The topic should be exhaustively researched in terms of applicable primary sources. The footnotes and

continued on page 16

2017 Annual Conference Sails to Success in San Diego

Good spirits abounded at ELA's 2017 conference, as about 240 participants enjoyed not only a rewarding conference, with more than 75 informative presentations, but also the mostly sunny skies and beautiful surroundings of San Diego.

Events kicked off with the preconference on Wednesday, Nov. 8. Following an all-day seminar and three afternoon-only sessions were the first-time attendee orientation and a casual welcome social gathering.

Thursday started early with ELA's first 5K Fun Run and 1-Mile Walk, at 6:30 a.m. The regular conference opened with a discussion of the First Amendment by featured speaker Susan Kruth, from the Foundation for Individual Rights in Education. Following the morning concurrent sessions, the Appreciation Luncheon saw volunteers honored, the election of new officers and confirmation of board members, and presentation of ELA awards. A poster session and reception followed the afternoon presentations.

The featured speaker, California Supreme Court Justice Goodwin Liu, led the opening breakfast on Friday with an address on the challenges for higher education. Also on Friday were the Role-Alike Luncheon and ELA committee meetings in the afternoon.

With the concurrent sessions wrapped up on Friday, Saturday's half-day schedule began with an early special session on street law and dealing with the media. Roundtable sessions then were held, and the final event of the conference was a brunch featuring Mark Walsh, Education Week correspondent, presenting his annual Supreme Court report.

San Diego's association with sailing was reflected in the nautical theme of the display tables, with many ELA books available at special discounts. The posters sported fish with the names of ELA authors, committee leaders, and other volunteers.

A roundtable on sexual assault in higher education was led by David H.K. Nguyen and Debra Radi

Proceeds from the gift basket raffle will benefit ELA's technology fund, including paying for website upgrades

Neal Hutchens moderated a discussion on the First Amendment following featured speaker Susan Kruth's presentation

2017 Annual Conference co-chairs Mark Paige (left) and KB Melear

Panel discussion on Hot Topics in K-12 Education Law with Suzanne Eckes, Mario Torres, David Thompson, Susan Clark, Francesca Hoffman, and Melissa Boguslawski

Featured speakers were: Thursday – Susan Kruth, Senior Program Officer with FIRE, on the First Amendment; Friday – Justice Goodwin Liu with the California Supreme Court (shown here with his children at the conference) on challenges to higher education; and Saturday – Mark Walsh, Education Week correspondent, presenting his popular annual Supreme Court report

Mercy Roberg was an exhibitor and a preconference presenter

Officers and Board Members Elected, Awards Presented at Conference

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Education Law Association's annual business meeting, election of officers, and awards presentation spanned both Thursday's Appreciation Luncheon and Friday's opening session at the annual conference.

Changes in the association's officers included Suzanne Eckes taking the gavel as president, with Wayne Haglund moving to her former position as president-elect. Replacing him as vice president was Susan Bon. Lynn Rossi Scott now holds the title of immediate past president.

New members elected to full terms on ELA's Board of Directors were Christine Kiracofe, Kevin McKenna, and Mark Paige.

The complete list of 2018 officers and board members is shown at left.

Most of ELA's annual awards were presented at the Appreciation Luncheon. William E. Thro, General Counsel of the University of Kentucky, received the M.S. McGhehey Award for outstanding service.

The George Jay Joseph Education Law Writing Award went to Daisha L. Hodges, of Southern University Law Center. Accepting the second August W. Steinhilber Award for Best Legal Brief were Husch Blackwell LLP legal team member Michael T. Raupp and Julie Wright Halbert, with Council of the Great City Schools, for the law firm's *amicus curiae* brief to the U.S. Supreme Court on behalf of the Council, in regard to the *Endrew F. v. Douglas County School District* case.

The Steven S. Goldberg Award for Distinguished Scholarship in Education Law was awarded to Karen M. Tani, J.D., Ph.D., of the UC Berkeley School of Law, who could not attend. California Supreme Court Associate Justice Goodwin Liu, the first recipient of that award in 2007, was present as the featured presenter and accepted the award on her behalf Friday morning.

Goodwin Liu, Associate Justice of the California Supreme Court, accepted the Steven S. Goldberg Award for Distinguished Scholarship in Education Law on behalf of the 2017 recipient, Karen M. Tani, J.D., Ph.D. of the UC Berkeley School of Law. He is pictured with committee co-chair Chris Borecca, at right.

William E. Thro, J.D., General Counsel of the University of Kentucky in Lexington (left), received the prestigious 2017 M.A. McGhehey Award, for outstanding contributions to the field of education law and service to the Education Law Association, from committee co-chair Philip T.K. Daniel.

Michael T. Raupp, with Husch Blackwell, and and Julie Wright Halbert, with Council of the Great City Schools, accept the 2017 August W. Steinhilber Best Brief Award for the firm's brief in the Endrew F. v. Douglas County Schools *case. To their left is Tom Hutton and at right is Wayne Haglund, the committee co-chairs.*

New ELA President Suzanne Eckes (right) accepts the gavel from 2017 president, Lynn Rossi Scott. Other 2018 officers installed were Wayne Haglund as president-elect and Susan Bon as vice president. Three new board members were confirmed.

Annual Conference Photo Gallery

From left, Charlie Russo, board member Spencer Weiler, and Scott Sweetland

Julie Mead

"Captain" Cate Smith poses at the wheel of the rented boat in the marina near the Sheraton where the ELA staff stayed, because the room block at the conference hotel was full

Mary Kay Bacallao in discussion with Preston Green.

Executive Director Cate Smith, fourth from left, poses with the presenter team from University of South Florida in Tampa: Dustin Robinson, Amanda Fleischbein, board member Steve Permuth, Meaghan McKenna, and Jacob Durrance

Board member Joe Dryden (left) with Robert Hachiya

Presenter Stephanie Klupinski attended the conference with her family

Traci Ballard, Kevin Brady, Jackie Stefkovich, and Mario Torres

Taylor Hoffman, who presented a poster session, is pictured with her grandfather, Ronald Hoffman

Betsy Shaver (left) and board member Janet Decker were coeditors of The Principal's Legal Handbook 6th Edition and A Guide to Special Education Law, both published in 2017.

Participants in ELA's first 5K Fun Run and 1-Mile Walk, held early Thursday morning

Back of the Sheraton San Diego Bay Tower, as seen from the adjacent marina.

The hotel's patio restaurant/lounge was a favorite hangout spot at night

The ELA staff, from left: Cate Smith, Executive Director; Pam Hardy, Publications Specialist; Pat Petrusky, Member Services

E-books start to make an impact in ELA publication offerings

Last July, for the first time, Education Law Association produced sections of *The Principal's Legal Handbook, 6th Edition* as stand-alone, digital-only publications. This marks a change of direction for ELA, which has always concentrated on print books.

"The editors of PLH wanted to give students more flexibility and economy for their class needs, when only one section is needed for a particular course," said Executive Director Cate Smith.

Each of the four sections of the total 840-page, $84.99 retail book—Students and the Law, Special Education and the Law, Teachers and the Law, and Schools and the Law—is available as a secured pdf e-book for $24.99, with no shipping charges added.

For those who want more comprehensive information than is provided by *The Principal's Legal Handbook* section alone, ELA is in the process of producing a series of PLH spin-offs that add new material on specific subjects. The first of these was *A Guide to Special Education Law*, and *Administrators' Guide to Employment Law and Personnel Management in Schools* has just been released. Both are offered in print and e-book formats.

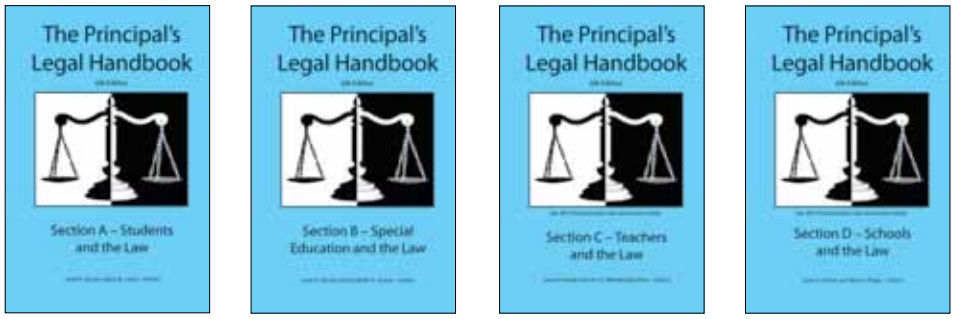
Although a small number of e-books have been available from ELA for a few years, there has been little interest in this category. Occasionally, universities have requested pdf versions of print books they purchase to convert into accessible media for students with special needs.

Now, though, improvements in technology have made digital formats more usable and desirable.

One of the advantages of digital is making the text available sooner than the print version, when time is an issue. Another is the ease of making corrections or updates.

Perhaps the greatest potential of e-books is in the area of customization. "We've already assembled a custom digital textbook drawing chapters from multiple publications," Smith said, "and I know that will be one of our growing areas—not only helping customers get exactly what they want, but also helping ELA authors get more exposure for their work."

The more recently issued ELA publications are available in e-book format from our online bookstore. See the guidelines at right for helpful information about ordering and using Education Law Association e-books.



These individual sections of the latest edition of The Principal's Legal Handbook are offered in digital format only, marking a change in direction for ELA publications

Purchasing and Using E-Publications

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- You will have received a purchase confirmation e-mail. It contains a download link for your new book. When you click on it, you should see a message asking if you want to open the file or save it. Select save. Remember where you have stored the file.

- If you try to open the file with Adobe's PDF reader, or a similar program, you will see a blank page. That is on purpose, not a malfunction. Instead, open the Haihaisoft PDF reader. At top left of the control panel, toggle "file/open." Navigate to the folder where you stored your e-book. Click on the file to open. The first time you do this, you will be asked to log in with your ELA username and password. That serves to validate your access rights.

- If you're attempting to do this on an institutional or company computer, consult your IT Department first. Most employers forbid employees from installing software on their office computers. You may even be prohibited from downloading files. Your best choice is to always use a personal device to buy and read our digital products.

- If you encounter a problem, please make sure you have followed the instructions above, then read the User Guide provided with your purchase. then contact ELA by phone or e-mail for quick tech support: https://educationlaw.org/contact/general-inquiries.

- No returns will be made on digital products. No refunds will be made except under exceptional circumstances of technical malfunction.

State Education Agencies as Defendants under the IDEA and Related Federal Laws: A Compilation of the Court Decisions*

Perry A. Zirkel, Ph.D., J.D., L.L.M.**

Education Law Into Practice
A Special Section of West's Education Law Reporter Sponsored by the Education Law Association

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For this brief annotated compilation of court decisions in approximate chronological sequence since the year 2000,[1] the acronyms are: ADA=Americans with Disabilities Act; CRP=complaint resolution process; FAPE=free appropriate public education; IDEA=Individuals with Disabilities Education Act; IHO=impartial hearing officer; LEA=local education agency; SEA=state education agency. Additionally, the following two symbols precede each citation to designate the outcome of the case in terms of fitting within scope of potential SEA liability: ***P***=in favor of the plaintiff-parent(s); ***(P)***=potential but not actual liability; ***S***=in favor of the SEA.[2]

The coverage is limited to the issue of whether SEAs are subject to litigation under the IDEA and, as a secondary matter, § 504 or the ADA.[3] The coverage does not extend to the unquestioned FAPE liability for SEAs in their provision of direct services to students with disabilities, such as via a state school for the deaf.[4] It also does not include the related but separable issues of SEA consent decrees under the IDEA or § 504/ADA.[5] The final exclusion was for cases resolved on or limited to adjudicative issues, such as the exhaustion requirement,[5]6statute of limitations,[7] claim preclusion,[8] and class certification.[9]

The relevant provisions of the IDEA are primarily those concerning the SEA's obligations to provide (1) direct services to students with disabilities,[10] (2) direct services when the LEA is unable to provide FAPE,[11] (3) general supervision for LEA compliance,[12] and (4) an IHO system within a specified subject matter jurisdiction.[13]

Although interested individuals and organizations should examine the cited court opinions with legal counsel for the interpretation as applied to their particular jurisdiction, the author offers the following tentative overall conclusions for the further developing case law during the recent period for SEA's susceptibility to suit[14] (with the numbers for the cited cases listed after each one):[15]

• Neither school districts nor private schools may sue SEAs under the IDEA – case nos. **4**, **8**, 21, 28, 31, 40, 41.

• However, advocacy groups for parents do have representational standing for such suits – case nos. 16, 34.

• In the jurisdictions that have addressed these situations thus far, parents of students with disabilities may sue SEAs under the IDEA for:
(a) direct services (e.g., state schools) – see *supra* note 3.
(b) state regulations – case nos. (**33**), **43**; *cf*. 2 (failure to issue regs).
(c) systemic violations – case nos. 12, (15), (17), (19), (20), 26, 29, 32, 34, (42).
(d) contingent direct service[16] but only upon strict conditions – case no. (**30**), (48); *cf*. 39.
(e) enforcement of IHO decision – case nos. 10, (14).

• Conversely, in most jurisdictions that have addressed the issue, parents of students with disabilities may not sue SEAs under the IDEA for the following issues:
- an IHO decision where SEA is not substantially involved – case nos. 1, **9**, 11, 22, 29, 35, 43; *cf*. 25, 45 (individual FAPE). *But see* case nos. 13, 36.
- the IHO system – case no. 38.
- a CRP decision – case nos. 6, 40; *cf*. 45. *But see* case no. 18.

• For corresponding claims against SEA based on § 504/ADA, the basic applicable requirements are:
(a) prima facie elements – case nos. (7), (22), 24, (**37**).
(b) bad faith or gross misjudgment – case nos. (25), 26, 44, (46), (48).

• Conclusive rulings against SEAs in such cases have been negligible thus far, although perhaps attributable in part to settlements and unreported decisions.

1. *S* *Carnwath v. Grasmick,* 115 F. Supp. 2d 577, 247 Ed.Law Rep. 955 (D. Md. 2000)
• ruled that parents do not have viable claim against SEA, in wake of losing IHO decision, with respect to IHO errors of law or procedural violation, training/competence, or delay in decision not directly attributable to SEA nor to child's alleged denial of FAPE where not involved in it

2. *P* *J.R. v. Waterbury Bd. of Educ.*, 272 F. Supp. 2d 174, 180 Ed.Law Rep. 172 (D. Conn. 2001)
• ruled that parents' stated claim against SEA under § 1983-IDEA for failing to promulgate standards governing the operation of private entities that provide vocational opportunities to special education students

3. *P* *John T. v. Iowa Dep't of Educ.,* 258 F.3d 860, 155 Ed.Law Rep. 1077 (8th Cir. 2001)
• ruled that the SEA was liable for attorneys' fees where instead of seeking dismissal as a real party in interest at the court level the SEA took a zealous position against the ultimately prevailing parents, but not for those fees attributable to the due process hearing, where the SEA was not a party

4. *S* *Cty. of Westchester v. State of N.Y.,* 286 F.3d 150, 163 Ed.Law Rep. 602 (2d Cir. 2002)
• ruled that counties (or any other LEA) seeking to challenge the lack of an interagency agreement do not have a private right of action (to sue the SEA) under the IDEA

5. *S* *Adams v. Sch. Bd. of Anoka-Hennepin Indep. Sch. Dist.,* 38 IDELR ¶ 6 (D. Minn. 2002); *see also Canton Bd. of Educ. v. N.B.*, 343 F. Supp. 2d 123, 193 Ed.Law Rep. 719 (D. Conn. 2004)
• ruled that parent's claim of improper training of IHOs was not a viable claim against SEA under the IDEA or § 1983 IDEA

6. *S* *Va. Office of Protection and Advocacy v. Va. Dep't of Educ.,* 262 F. Supp. 2d 648, 177 Ed.Law Rep. 1079 (E.D. Va. 2003)
• ruled that the IDEA does not provide a private right of action against an SEA to challenge a CRP investigation

7. *P* *D.D. v. N.Y.C. Bd. of Educ.*, 41 IDELR ¶ 8 (S.D.N.Y. 2004), *vacated on other grounds*, 480 F.3d 138, 217 Ed.Law Rep. 86 (2d Cir. 2007)

- ruled that SEA was proper defendant under § 1983 IDEA (not IDEA alone) in class action on behalf of more than 500 preschool children who lacked full implementation of their IEPs
- dismissed class action § 504 reasonable accommodation claim against SEA for missing essential element—denial of participation or benefits or other discrimination by reason of their disabilities

8. *S* *Lawrence Twp. Bd. of Educ. v. State of N.J.*, 417 F.3d 368, 200 Ed.Law Rep. 524 (3d Cir. 2006)
- ruled that IDEA does not provide LEA with private right of action against SEA[17]

9. *S* *Pachl v. Seagren*, 453 F.3d 1064, 210 Ed.Law Rep. 940 (8th Cir. 2006)
- affirmed dismissal of claim against SEA, as part of appeal of IHO decision, due to failure to "articulate a specific manner" in which the SEA allegedly neglected its duties of general supervision (with appointment of IHO itself insufficient for this purpose)

10. *P* *Allen v. Ark. Dep't of Educ*., 48 IDELR ¶ 95 (E.D. Ark. 2007)
- preserved for further proceedings whether the SEA breached its obligations to enforce an IHO decision under the IDEA

11. *S* *Friendship Edison Pub. Charter Sch. v. Smith*, 429 F. Supp. 2d 195, 210 Ed.Law Rep. 214 (D.D.C. 2006)
- ruled that the SEA is not a proper (or necessary) party in the judicial appeal of an IHO's decision under the IDEA

12. (*P*) *M.K. v. Sergi*, 47 IDELR ¶ 214 (D. Conn. 2007); *Fetto v. Sergi*, 181 F. Supp. 2d 53, 161 Ed.Law Rep. 347 (D. Conn. 2001)
- ruled that SEA is a proper defendant in court for a systemic, not an individual, IDEA claim, but in both of these cases the SEA did not violate the IDEA in failing to extend the IHO system to non-education state agencies

13. *P* *T.B. v. Bryan Indep. Sch. Dist.*, 47 IDELR ¶ 224 (S.D. Tex. 2007)
- denied dismissal in ruling that parent, in the wake of adverse IHO decision, has standing to sue SEA, which is ultimately liable under the IDEA (citing, inter alia, 5th Circuit's 1998 decision in *St. Tammany Parish v. La.*)

14. *S* *Dormevil v. Cal. Dep't of Educ.*, 48 IDELR ¶ 182 (S.D. Cal. 2007)
- ruled that parents have neither standing nor cause of action for a IHO decision in favor of the parents that the district implemented

15. (*P*) *J.S. v. Sylvan Union Sch. Dist.*, 49 IDELR ¶ 253 (E.D. Cal. 2008)
- ruled that parents failed to sufficiently plead systemic violation against SEA (here in terms of unfairness in the IHO system)—factual allegations must contain more than a formulaic recitation of the elements for a cause of action

16. *P* *N.J. Protection & Advocacy, Inc. v. N.J. Dep't of Educ.*, 563 F. Supp. 2d 474, 235 Ed.Law Rep. 964 (D.N.J. 2008)
- ruled that protection and advocacy agency has standing under IDEA to sue SEA for alleged systemic violations

17. *S* *H.H. v. Ind. Bd. of Special Educ. Appeals*, 50 IDELR ¶ 131 (N.D. Ind. 2008)
- ruled that parent's claim that SEA violated its obligation to ensure that LEAs provide a continuum of placements did not survive summary judgment

18. *P* *S.A. v. Tulare Cty. Office of Educ.*, 51 IDELR ¶ 244 (E.D. Cal. 2009)
- ruled that parents have private right of action under IDEA in the wake of CRP investigation

19. *S* *Quattroche v. E. Lyme Bd. of Educ.*, 604 F. Supp. 2d 403, 243 Ed.Law Rep. 670 (D. Conn. 2009)
- ruled that parent's claim that IHO's dismissal of her § 504 claim based on a state circular concerning subject matter jurisdiction did not sufficiently state a systemic violation under the IDEA

20. (*P*) *M.O. v. Ind. Dep't of Educ.*, 635 F. Supp. 2d 847, 248 Ed.Law Rep. 392 (N.D. Ind. 2009); *see also H.H. v. Ind. Bd. of Special Educ. Appeals*, 50 IDELR ¶ 34 (N.D. Ind. 2008)
- without directly addressing whether the parents had a right to sue the SEA upon losing at the second tier, ruled that they did not survive summary judgment because (1) their claim of an unfair two-tier system lacked sufficient evidence of a systemic violation, and (2) the applicable case law concerning procedural violations did not support the application of their claim
- also ruled that the state's second tier system was entitled to quasi-judicial, absolute immunity

21. *S* *P.W. v. Delaware Valley Sch. Dist.*, 52 IDELR ¶ 192 (E.D. Pa. 2009)
- ruled that LEA does not have right to sue SEA under the IDEA (citing *Lawrence*)

22. *S* *R.W. v. Ga. Dep't of Educ.*, 48 IDELR ¶ 279 (N.D. Ga. 2007), *aff'd mem*., 353 F. App'x 422 (11th Cir. 2009)
- ruled that parent's suit, based on IDEA, § 504, and Constitution in the wake of IHO dismissal of their IDEA IHO filing for being one day late, lacked standing against SEA (for lack of causally traceable injury-in-fact) and lacked jurisdiction against state office of administrative hearings
- awarded attorney fees against plaintiff's counsel for lack of reasonable basis in law (per IDEA provision for reverse attorney fees)

23. *P* *L.M.P. v. Florida Dep't of Educ.*, 345 F. App'x 428, 252 Ed.Law Rep. 134 (11th Cir 2009)
- ruled that parents do not have standing to sue the SEA under the IDEA based on an IHO decision that is not yet final (here a ruling that the district denied FAPE as basis for requested remedy)

24. *P* *P.W. v. Delaware Valley Sch. Dist.*, 53 IDELR ¶ 289 (E.D. Pa. 2009)
- ruled that parents stated IDEA claim against the SEA for failing to establish "'procedures to ensure that it complies with the monitoring and enforcement requirements'"
- ruled also that parents stated prima facie claim against the SEA under § 504

25. *S* *B.J.S. v. State Educ. Dep't/Univ. of N.Y.*, 699 F. Supp. 2d 586, 258 Ed.Law Rep. 140 (W.D.N.Y. 2010)
- ruled, via detailed analysis, that the SEA is not properly a defendant in a lawsuit concerning individual FAPE under the IDEA
- dicta that even if the plaintiff-parents had directed their ADA claim against the SEA, it would not be viable in the absence of bad faith or gross misjudgment

26. *P* *Kalliope R. v. N.Y. State Dep't of Educ.*, 827 F. Supp. 2d 130, 279 Ed.Law Rep. 640 (E.D.N.Y. 2010)
- ruled that plaintiff's claim of systemic violation, here being alleged state policy prohibiting a certain student-teacher-paraprofessional ratio, qualified as exception to exhaustion doctrine and sufficiently stated claim against SEA under the IDEA
- also ruled that the systemic claim sufficiently pled gross misjudgment or

bad faith for further proceedings under § 504

27. *S* *Orange Cty. Dep't of Educ. v. Cal. Dep't of Educ.*, 668 F.3d 1052, 277 Ed.Law Rep. 74 (9th Cir. 2010)
- ruled that, under state law, the SEA is not responsible under the IDEA for FAPE for ward of state in out-of-state placement after Oct. 10, 2007

28. *S* *Traverse Bay Area Intermediate Sch. Dist. v. Mich. Dep't of Educ.,* 615 F.3d 622, 260 Ed.Law Rep. 28 (6th Cir. 2010)
- ruled that LEAs do not have an express or implied private right of action under the IDEA to challenge the state's implementing administrative adjudicative system

29. *P/S* *L.K. v. N.C. State Bd. of Educ.,* 55 IDELR ¶ 47, *adopted*, 55 IDELR ¶ 70 (E.D.N.C. 2010)
- ruled that parent, in the wake of a second tier decision has standing to challenge the second tier, as an IDEA implementing structure, but not the review officer's decision (here, challenge to the review officer's state standard of review)

30. *S* *Chavez v. New Mexico Pub. Educ. Dep't,* 621 F.3d 1275, 261Ed.Law Rep. 71 (10th Cir. 2010)
- ruled that the SEA was not within IHO's jurisdiction when the SEA—as compared with the LEA—was only potentially, not actually, involved in the provision of FAPE
- ruled that the SEA was not responsible under the IDEA for direct services (as contrasted with financial liability) in the absence of sufficient notice of noncompliance (and exhaustion of reasonable opportunity to correct it)

31. *S* *Yolo Cty. Office of Educ. v. Cal. Dep't of Educ.*, 59 IDELR ¶ 123 (E.D. Cal. 2012)
- ruled that an LEA lacks a private right of action under the IDEA to challenge a CRP decision (*citing Lake Washington > S.A.)*

32. *P* *Chester Upland Sch. Dist. v. Commw. of Pa.*, 284 F.R.D. 305, 285 Ed.Law Rep. 869 (E.D. Pa. 2012)
- ruled that parents, in class action, have standing and private right of action against SEA under the IDEA (for alleged systemic violation re funding)

33. (*P*) *Bryant v. N.Y.S. Educ. Dep't*, 692 F.3d 202, 284 Ed.Law Rep. 1 (2d Cir. 2012); *see also Alleyne v. N.Y.S. Educ. Dep't*, 691 F. Supp. 2d 322, 257 Ed.Law Rep. 119 (N.D.N.Y. 2010)
- ruled that state regulation prohibiting aversives did not violate IDEA or, in the absence of bad faith or gross misjudgment, § 504

34. *P* *Morgan Hill Concerned Parents Ass'n v. Cal. Dep't of Educ.*, 61 IDELR ¶ 13 (E.D. Cal. 2013)
- ruled that organization of parents of students with disabilities has standing and private right of action under the IDEA for alleged systemic violations of IDEA

35. (*P*) *I.E.C. v. Minneapolis Pub. Sch.*, 970 F. Supp. 2d 917, 302 Ed.Law Rep. 1025 (D. Minn. 2013)
- ruled that parents, in wake of two IHO dismissal decisions, did not fulfill the "specific manner" criterion of *Pachl* (*supra*)

36. *P* *O.J. v. Bd. of Educ. v. Union Cty.,* 61 IDELR ¶ 158 (E.D. Tenn. 2013); *see also L.H. v. Hamilton Cty. Dep't of Educ.,* 64 IDELR ¶ 207 (E.D. Tenn. 2014) (allowed plaintiff parents to amend their complaint to assert SEA liability[18])
- ruling, rather briefly, that parents, in the wake of losing an IHO decision bring its appeal against not only the LEA but also the SEA, briefly relying on the broad view in the 4th Circuit's 1997 decision in *Gadsby v. Grasmick* rather than the competing view limited to systemic violations

37. (*P*) *CG v. Pa. Dep't of Educ.*, 734 F.3d 229, 298 Ed.Law Rep. 120 (3d Cir. 2013)
- ruled that parents' class failed to show that SEA's special education funding formula violated § 504/ADA (not appealing lower court's same conclusion under the IDEA)

38. *S* *M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842, 309 Ed.Law Rep. 155 (9th Cir. 2014)
- ruled that the IDEA does not confer on parents an express right to sue the SEA re their administrative dispute resolution systems (while declining to address whether the IDEA implies such a private right of action)

39. *P* *Charlene R. v. Solomon Charter Sch.,* 63 F. Supp. 3d 510, 317 Ed.Law Rep. 761 (E.D. Pa. 2014); *see also H.E. v. Walter D. Palmer Leadership Learning Partners Charter Sch.*, __ F. Supp. 3d __ (E.D. Pa. 2016)[19]
- ruled that a settlement agreement (here as a result of the resolution meeting process) between a parent and a charter school, which is an LEA, is enforceable against the SEA in the "limited scenario" where the charter school ceased to exist (here due to insolvency)—preemption of conflicting state law

40. *S* *Fairfield-Suisun Unified Sch. Dist. v. State of Cal. Dep't of Educ.*, 780 F.3d 968, 315 Ed.Law Rep. 39 (9th Cir. 2015); *Lake Washington Sch. Dist. No. 414 v. Office of Superintendent of Pub. Instruction*, 634 F.3d 1065, 265 Ed.Law Rep. 889 (9th Cir. 2011)
- ruled that IDEA did not confer upon LEAs the express right to sue the SEA in federal court (in wake of CRP decision in *Fairfield-Suisun* and in wake of IHO decision in *Lake Washington*) while declining to reach issue of possible implied private right of action in *Fairfield-Suisun*

41. *S* *E. Ramapo Cent. Sch. Dist. v. King,* 11 N.Y.S 3d 284, 318 Ed.Law Rep. 1078 (App. Div. 2015)
- ruled that LEAs do not have right sue SEA under the IDEA in the wake of a CRP decision

42. *S* *B.S. v. Anoka-Hennepin Sch. Dist*., 799 F.3d 1217, 322 Ed.Law Rep. 45 (8th Cir. 2015)
- affirmed dismissal of SEA as defendant in the absence of a systemic violation – here, the SEA's only connection to the ALJ's time limits was ITS appointment of the ALJ (citing *Pachl*)

43. *P* *D.M. v. N.J. Dep't of Educ.*, 801 F.3d 205, 322 Ed.Law Rep. 127 (3d Cir. 2015), *on remand*, 66 IDELR ¶ 226 (D.N.J. 2015)
- ruled that parents have right to sue SEA to challenge state regulation regarding private schools that allegedly interfered with child's right to FAPE in the LRE (with exhaustion excused due to inability to include SEA in IHO proceeding)
- ruled also, on remand, that private school lacks express and implied right of action against SEA under the IDEA

44. *P* *W.H. v. Tenn. Dep't of Educ.,* 67 IDELR ¶ 6 (M.D. Tenn. 2016)
- ruled that systemic claim of alleged practice of providing more funding for segregated placements, thus incentivizing IEP teams to violate the LRE mandate, satisfied the bad faith or gross misjudgment standard for § 504 and ADA liability regardless of subjective intent

45. *P* *Everett H. v. Dry Creek Joint Elementary Sch. Dist.*, 63 IDELR ¶ 39 (E.D. Cal. 2014), *reconsideration denied*, 66 IDELR ¶ 68 (E.D. Cal. 2015), *further proceedings*, 68 IDELR ¶ 190 (E.D. Cal. 2016) (denied both parties' motions for summary judgment)

- ruled that parents have implied private right of action against SEAs under the IDEA for overall policies and procedures (here CRP investigations)

46. *S* *Y.D. v. N.Y.C. Dep't of Educ.,* 67 IDELR ¶ 57 (S.D.N.Y. 2016)20

- ruled that the SEA is not properly a defendant in a lawsuit concerning a particular IEP (in contrast with a systemic violation) under the IDEA
- ruled also that the plaintiff-parents did not state a claim against the SEA under § 504 in the absence of inferable factual basis for bad faith or gross misjudgment (here review officer decision 462 days late with apology letter explaining that the circumstances were beyond the review officer's control)

47. *S* *Coningsby v. Or. Dep't of Educ.,* 65 IDELR ¶ 159 (D. Or. 2016)

- upheld the IHO's ruling that the SEA was not a proper party at the due process hearing because it was not involved in the actual provision of FAPE (citing *Chavez*)
- also dismissed with prejudice the plaintiff-parent's claim in the wake of CRP decision because, based alternatively on *Rooker-Feldman* doctrine and issue preclusion, the state court had already litigated this issue

48. *S* *Johnston v. New Miami Local Sch. Bd.*, 68 IDELR ¶ 201 (S.D. Ohio 2016)

- ruled that LEA's delay in providing FAPE in the wake of an expulsion even after SEA CRP investigation and order (1) did not require the SEA to provide direct services under the IDEA in light of the SEA's exercise of "a reasonable opportunity to compel compliance through setting deadlines, threatening to withhold funding, and ultimately withholding funding," and (2) did not violate § 504 due to SEA's lack of gross misjudgment or bad faith

49. *S* *Manning v. Mo. Dep't of Educ.*, 68 IDELR ¶ 243 (E.D. Mo. 2016)

- dismissed claim of pro se parent against SEA regarding her individual child because IDEA does not provide for money damages and, in any event, she failed to exhaust the IDEA's administrative adjudication procedures

ENDNOTES

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1 For the prior case law, see Thomas Mayes & Perry A. Zirkel, *State Education Agencies and Special Education: Obligations and Liabilities*, 10 B.U. Pub. Int. L.J. 62 (2000). Additionally, this more recent coverage does not extend to relevant federal agency policy interpretations. *See, e.g., Letter to Kane*, 65 IDELR ¶ 303 (OSEP 2015) (opining that an SEA's refusal to take the direct service funding action under 34 CFR § 300.227 after a factual determination has been made that a LEA is "unable to establish and maintain programs of FAPE" for an eligible child or group of children violates the IDEA); *Letter to Covall*, 48 IDELR ¶ 106 (OSEP 2006) (opining that SEA has ultimate responsibility for FAPE for placements by non-education agencies though SEA can seek reimbursement from the non-education agency).

2 The outcome entries in the case list are only approximate in light of the fuzzy scope of potential liability.

3 In contrast, cases limited to constitutional claims are not included herein. *See, e.g*., Brittany O. v. Bentonville Sch. Dist., 67 IDELR ¶ 114 (E.D. Ark. 2016).

4 *See, e.g.,* M.S. v. Utah Sch. for the Deaf, 822 F.3d 1128, 331 Ed.Law Rep. 696 (10th Cir. 2016); Barron v. S. Dakota Bd. of Regents, 655 F.3d 787, 272 Ed.Law Rep. 831 (8th Cir. 2011); Mo. Dep't of Elementary & Secondary Educ. v. Springfield Sch. Dist. R-12, 358 F.3d 992, 185 Ed.Law Rep. 416 (8th Cir. 2004); C.S. v. State of Mo., 670 F. Supp. 2d 972, 253 Ed.Law Rep. 414 (E.D. Mo. 2009).

5 *See, e.g.,* Emma C. v. Estin, 985 F. Supp. 940, 123 Ed.Law Rep. 717 (N.D. Cal. 1997), *various further proceedings including* 67 IDELR ¶ 119 (N.D. Cal. 2016); Gaskin v. Commw. *of Pa*., 231 F.R.D. 195 (E.D. Pa. 2005). Corey H. v. Chicago Bd. of Educ., 528 F. App'x 666 (7th Cir. 2013); Angel G. v. Texas Educ. Agency, 41 IDELR ¶ 31 (W.D. Tex. 2004).

6 *See, e.g.,* Brooke M. v. Alaska Dep't of Educ., 293 F. App'x 452, 239 Ed.Law Rep. 365 (9th Cir. 2008).

7 *See, e.g.,* Brittany O. v. Bentonville Sch. Dist., 64 IDELR ¶ 299 (E.D. Ark. 2015).

8 *See, e.g.,* Blunt v. Lower Merion Sch. Dist., 767 F.3d 247, 309 Ed.Law Rep. 28 (3d Cir. 2014).

9 *See, e.g.,* Jamie S. v. Milwaukee Pub. Sch., 668 F.3d 481, 277 Ed.Law Rep. 34 (7th Cir. 2012).

10 20 U.S.C. § 1413(g)(1)(D).

11 *Id*. § 1413(g)(1)(B).

12 *Id*. §§ 1412(a)(11)(A) and 1416(a)(1)(C).

13 *Id*. § 1415(b)(6)(A). For the derivative right of judicial review, see *id.* §1415(i)(2)

14 "Suit" in this context specifically refers to the judicial context. For the contrasting IHO context, see case no.

15 Bold font designates those case numbers for federal appellate court decisions. Although not entirely precise, the parenthetical case nos. designate case nos. that represent but fail to fulfill or succeed with the identified feature. For the trends during the earlier period, see Mayes & Zirkel, *supra* note 1,

16 "Contingent" here refers to the regulatory of the LEA's inability to provide FAPE. For an example of a formalized state procedure for such situations, see Georgia's mandatory determination regulation. Ga. Comp. R. & Regs. 160-4-7-.20.

17 This Third Circuit decision seems to have overruled *S.C. v. Deptford Township Board of Education*, 213 F. Supp. 2d 452, 168 Ed.Law Rep. 283 (D.N.J. 2002), which ruled that LEAs (as third-party plaintiffs) had private right of action and standing against SEA and that SEA was ultimately liable under IDEA 1997 provision for inter-agency agreements. *See* Twp. of Bloomfield Bd. of Educ. v. S.C., 44 IDELR ¶ 128 (D.N.J. 2005).

18 The court in this pair of unpublished decisions ultimately relied on *Ullmo v. Gilmour Academy*, 273 F.3d 671, 679, 159 Ed.Law Rep. 251 (6th Cir. 2001), in which the court in background dicta commented: "Although the IDEA does not specifically name the party against whom such an action may be brought, the 'language and structure of [the] IDEA suggest that either or both entities [the SEA or LEA] may be held liable for the failure to provide a [FAPE]'" (citing *St. Tammany Parish Sch. Bd. v. La*., 142 F.3d 776, 784 (5th Cir. 1998) (quoting *Gadsby v. Grasmick*, 109 F.3d 940, 955 (4th Cir. 1997)).

19 For related decisions, *see* R.J. v. Rivera, 68 IDELR ¶ 101 (E.D. Pa. 2015) (preserving the parents' claim against the SEA for attorney fees); Olivia B. v. Sankofa Acad. Charter Sch., 63 IDELR ¶ 247 (E.D. Pa. 2014) (recognizing residual breach of contract claim against the LEA)

20 The court also dismissed the plaintiff's tort claims (here negligent or intentional infliction of emotional distress) based on Eleventh Amendment immunity.

Preventing Tragedies Before They Occur: The Need for Suicide Prevention Programs in Schools*

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Education Law Into Practice
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Introduction

The tragic phenomenon of student suicides, especially among middle schoolers,[1] has reached an all-time high in the United States. Not surprisingly, parents have initiated litigation against school boards and individual educators seeking redress after their children committed suicide due to bullying, generally[2] as well as due to their sexuality,[3] and/or disabilities,[4] or via sexting,[5] or in response to having been disciplined at school.[6]

In an effort to help stem the epidemic of student suicides, the remainder of this article is divided into three sections. The first part reviews counseling literature about suicide and how to recognize potential risk factors in students. The second section examines litigation wherein students committed suicide. The third part offers recommendations for educational leaders as they develop policies to combat student suicides. The article ends with a brief conclusion.

Background

A fundamental duty of educators is to provide students with safe learning environments. Unfortunately, though, many administrators, teachers, counselors, and parents are uncertain how to deal with children who express suicidal ideations or exhibit suicidal behaviors. Suicide, broadly defined as the intentional act of violence against one's self resulting in death, is often linked to or the result of existing mental health disorders, including depression, bipolar disorders, and substance abuse disorders, combined with external or environmental stress. Individuals at-risk for suicide may demonstrate suicidal behaviors observable by others.

Suicide is a preventable cause of death. Even so, data from the Centers for Disease Control and Prevention (CDC) identifies suicide as the second leading cause of death for persons ages 10 to 24 in 2014.[7] More alarming, researchers posit that for every suicide among young people, 100-200 individuals attempt to take their own lives.[8]

Compounding the problem of high suicide rates in students is that educators and parents may not be comfortable discussing this topic with young people. Further, individuals may not have experience in identifying signs and symptoms in young people who may be exhibiting suicidal tendencies. Insofar as the impact and effects of suicide extend beyond school walls, effective suicide prevention, intervention, and postvention policies require targeted efforts buttressed by school-community partnerships.

Suicide can impact individuals of all races, ethnicities, genders, and socioeconomic statuses. However, suicide statistics reveal higher suicide rates associated with varying demographic variables. For example, despite a higher rate of suicide attempts in females, males are more likely to die by suicide.[9] As to ethnicity, American Indian and Alaska Natives, as well as Hispanics, have higher suicide rates than Caucasian and African American students.[10] Also, lesbian, gay, bisexual, transgender, and questioning students may be at particular risk, with estimated rates of suicidal ideation, thoughts, and behaviors in excess of their heterosexual peers.[11]

Risk Factors

No single predictor characteristic is associated with suicidal ideation or behavior. Still, identifiable factors are associated with higher suicide risks. One of the most reoccurring risk factors in individuals who commit suicide is prior histories of one or more mental health disorders. According to data from the U.S. Department of Health and Human Services,[12] over 90% of children and adolescents who committed suicide had mental health disorders.[13] Moreover, individuals with histories of depression, schizophrenia spectrum disorders, substance-related disorders, and borderline personality disorder, as well as those with histories of psychological trauma, may be at more risk for suicide.[14]

Researchers have also found that histories of suicidal ideations or previous suicide attempts are strong risk factors for future suicide attempts. Students who have attempted suicide in the past may have a stronger intent to die than their peers who have had thoughts of suicide but have not engaged in previous suicidal behaviors.[15] Similarly, family histories of completed suicides or suicidal behaviors may also increase the risk of suicidal ideation and behavior in children and adolescents.

Suicidal ideation and behavior may be associated with stressful environmental or social situations. Accordingly, suicidal thoughts or behaviors may be "associated with a stressful event, particularly one resulting in humiliation, shame, or despair for the student,"[16]

Given the importance of social acceptance, especially during school years, interpersonal conflicts, such as breaking-up with significant others or falling outs with friends, may be risk factors for suicidal behavior for students. Environmental factors such as the lack of parental support, histories of domestic violence in households, or parental substance abuse may further increase the risk of suicide in children and adolescents compared to those not exposed to these conditions and stressors.[17]

Warning Signs

Identifying warning signs is the first step in preventing suicides. Most children and adolescents who are at risk of harming themselves demonstrate some type of warning signs possibly revealing their risks for suicide.[18] Having knowledge of these warning signs, while not always overt, can be integral in helping students get needed support.

Expressed direct or indirect threats to ones' self are warning signs individuals may be at risk of suicide. Individuals may make overt comments such as "I am going to kill myself," or more indirect comments such as "no one would miss me if I were gone." Regardless of the straightforwardness of threats, such comments are serious warning signs of suicidal ideation and the potential for future suicidal behaviors. Additionally, individuals who have thought about or created plans for suicides, especially those with access to a means for completing suicides such as owning guns, or leaving suicide

notes are at particular and serious risk for suicide and should get immediate treatment.

Changes in thoughts, feelings, appearance, and/or behavior may be other warning signs of potential suicidal behavior.[19] For example, excessive moodiness or social isolation in adolescents who are typically gregarious and happy may be indications that they are considering suicide.

Of specific concern are noticeably elevated moods or happiness after periods of depression; these may be indications of senses of catharsis accompanying students' acceptances of their decisions to attempt suicide and have come to terms with their deaths. Of course, these changes do not necessarily mean that students are suicidal. Consequently, noticeable and sudden changes should not be ignored as educators should consider suicidal risk assessments when they are observed. Other suicide warning signs include sudden changes in social networks, preoccupations with death or suicidal themes, the inability to concentrate, giving away personal possessions, loss of interest in once pleasurable activities, and sudden changes in eating or sleeping patterns.[20]

Litigation

Not surprising, the increase in the frequency of student suicides has resulted in litigation as discussed under the following headings.

Title IX

A federal trial court in Ohio rejected the Title IX[21] and other claims filed by the parents of a sixteen-year-old who committed suicide.[22] The court rebuffed the parental charges that officials failed to prevent the peer-to-peer bullying and harassment of their daughter, determining that educators acted reasonably in seeking to protect her from the actions of others.

Conversely, a federal trial court in Pennsylvania denied a school board's motion to dismiss Title IX charges where a student committed suicide after allegedly being sexually assaulted by a high school teacher/coach with whom she had an inappropriate relationship.[23]

The court pointed out that the parents sufficiently plead that educators demonstrated deliberate indifference to the student's plight and violated Title IX.

A federal trial court in California rejected a board's partial motion for summary judgment in the Title IX and state law suit filed by the mother of a thirteen-year-old who committed suicide after allegedly being harassed and bullied at school for being gay.[24] The court held that issues of fact remained over whether officials' responses caused the student to have the uncontrollable impulse to commit suicide.

Disability[25]

A federal trial court in Georgia, in an unpublished, but instructive, opinion that was summarily affirmed by the Eleventh Circuit rejected parents' contention that the failure of school officials to prevent the bullying of their son, who committed suicide, rose to the level of being conscience-shocking such that it justified an award of damages.[26] The parents insisted that school officials failed to take action to protect their son, who had Asperger syndrome, from bullying which they claimed was the sole or a substantial contributing cause of his suicide. In rejecting those allegations, the court conceded that educators had knowledge of the harassment and bullying, but refused to interpret their responses as deliberately indifferent. The court found evidence showing that administrators responded to each incident, disciplined the perpetrators, and took measures to prevent future harm. Even though the measures taken by school officials were ultimately ineffective, the court was satisfied that they had taken reasonable steps to prevent future abuse.

The Fifth Circuit, in a case that arose in Texas, affirmed that a board was not liable when a fourth-grade special-needs child locked himself inside a school nurse's bathroom and committed suicide. The court noted that educators were neither deliberately indifferent to peer harassment in violation of Section 504 of the Rehabilitation Act[27] of 1973 (Section 504) nor had they entered into a special relationship with the child's parents giving rise to a heightened duty of care to protect their son. The court emphasized that "the deliberate-indifference inquiry does not transform every school disciplinary decision into a jury question."[28]

A federal trial court first excused parents from having to exhaust administrative remedies under the Individuals with Disabilities Education Act (IDEA)[29] after their daughter committed suicide due to bullying and disability harassment by peers.[30] The court later granted the board's motion for summary judgment because the parents failed to prove that school officials had actual knowledge of the harassment.[31]

Conversely, in another dispute from Arkansas, a federal trial court rejected a school board's motion to dismiss Section 504 and Title IX claims parents filed after their son, who was on the autism spectrum and had attention deficit hyperactivity disorder, committed suicide after allegedly being harassed due to his disabilities.[32] The court thought that further proceedings might have resulted in sufficient evidence supporting the parental claim.

A federal trial court in New York rejected parental claims under the IDEA and Section 504.[33] The court explained that absent evidence officials failed to act to stop or prevent the harassment and bullying of their son, who committed suicide allegedly after having been subjected to such treatment by peers, their claim lacked merit.

Sexting[34]

After an eighteen-year-old in Cincinnati, Ohio, e-mailed a nude photograph of herself to her boyfriend, he passed it on to four of her friends who apparently forwarded it to other students. Over the ensuing weeks, hundreds of teenagers in local high schools viewed the student's picture. As a result, of being inundated with bullying and humiliating taunts, even at her graduation, she took her own life in July 2008.[35]

The student's parents filed suit in the federal trial court in Ohio. The court rejected the board's motion for summary judgment on Title IX and Section 1983[36] liability because questions of fact remained about whether school officials did all they could to protect the student who committed suicide.[37] The court did grant the board's motion with regard to the parents' negligent infliction of emotional distress charge on the basis that the board and individual school officials were entitled to immunity.

School Infractions

The Supreme Court of Montana affirmed that a board was not liable when a student committed suicide at his home on being suspended from his school's wrestling team for disciplinary infractions.[38] The court ruled that because the suicide was unforeseeable, and absent a special relationship, educators did not owe the student or his parents a duty to prevent him from taking his own life.

In a non-precedential order, the Sixth Circuit reached the same result when a student in Michigan committed suicide away from school when he was suspended for stealing a board-owned laptop. The court affirmed that the board was not liable because the student took his own life after being released to the custody of his parents.[39]

Recommendations

Given the unfortunate growth of student suicides, educational leaders, working with their attorneys, may wish to consider the following suggestions when devising or revising their suicide prevention policies.[40]

First, school boards should develop clear, up-to-date suicide prevention policies. Policy writing teams should include school counselors and psychologists, a school administrator, a teacher, a school nurse, representatives of local mental health organizations, parents, a community representative, and, perhaps, a student in high school along with the board attorney.

Second, policies should include procedures for staff and students to follow when referring students demonstrating suicidal behaviors, assurances of confidentiality for making good faith reports, chains of reporting so individuals know who to inform, and procedures for notifying school families and the media following tragedies.

Third, boards should develop partnerships with local mental health agencies and suicide prevention coalitions to help increase awareness about student suicide. Combining the efforts of schools and community groups, as reflected in the Yellow Ribbon Suicide Prevention Program, can greatly support suicide prevention and intervention efforts.

Fourth, educational leaders should offer regular professional development sessions for all staff members on suicide awareness and prevention, paying particular attention to liability arising under Title IX,[41] disabilities,[42] sexing,[43] and disciplinary matters.[44] Sessions should also focus on the warning signs and risk factors while readying participants to refer students for assessments by professionals such as school counselors and psychologists, when they observe or learn of student suicidal behaviors.

Fifth boards should modify curricula to include instruction about suicide prevention and awareness in health classes and school assemblies.

Sixth, educators should develop peer intervention programs because students may be more comfortable sharing personal information with peers rather than adults. These school-based suicide prevention programs should stress the importance of early detection and intervention for students expressing suicidal tendencies. Student-led activities can help build general knowledge and awareness of suicide while assisting participants in understanding warning signs they may recognize in peers. Programs, and policies, should inform students about whom they should notify, typically, a school's head counselor, when referring peers they suspect may be considering suicide.

Seventh, boards should create district and/or building-level crisis teams to provide resources and services whether for prevention, intervention, and/or postvention. Teams should consist of school counselors and psychologists, along with professionals from community organizations. Teams can work to develop prevention programs and complete risk assessments for students demonstrating suicidal behaviors.

Eighth, educators should conduct assessments to establish the level of risk to ensure that students can be referred for help if they display risk factors.[45] Educators should notify parents or guardians directly by phone when making referrals because their children may well have access to their email.

Ninth, in response to student suicides or attempts, support procedures should be in place. Plans should, for instance, identify who will communicate with a student's family if a suicide occurs at school, how information is to be disseminated in school, and who will serve as a spokesperson for the media.

Tenth, boards should make counseling available to staff and students following suicides or attempted suicides. Also, conducting large-scale gatherings, whether in classes or assemblies, can help students and staff discuss their reactions after tragedies. Counseling should be available on such key days as the anniversary dates of when suicides occurred, as well as the birthdays of those who died, because these dates can be especially stressful.

Eleventh, officials should work to restore senses of normalcy to schools as quickly as possible after suicides while caring for those in need of assistance. In helping school life return to normal, policies should suggest that teachers lighten academic workloads in the immediate aftermath of student suicides.

Twelfth, review and, if necessary, revise suicide prevention policies periodically. When reviewing policies, educational leaders would be well served by waiting, rather than acting immediately after controversies, so as to afford themselves time to reflect carefully on events and not act prematurely in making changes.

Conclusion

Pro-actively reviewing and revising suicide prevention policies certainly does not guarantee the prevention of all student suicides. However, careful planning can help educational leaders to reduce, if not eliminate the epidemic if student suicides while helping to ensure the safety of all in their learning communities.

ENDNOTES

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[29] 20 U.S.C. §§ 1400-1482 (2012

[30] *Moore*, *supra* note 4.

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[37] *Logan*, *supra* note 5.

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[39] For other cases refusing to impose liability on boards where students committed suicide when not in the control of school officials, *see*, *e.g.*, *Beam v. Western Wayne Sch. Dist.*, 165 F. Supp. 3d 200, 334 Ed.Law Rep. 303 (M.D. Pa. 2016); *Estate of Smith v. Western Brown Local Sch. Dist.*, 26 N.E.3d 890, 314 Ed.Law Rep. 1079 (Ohio Ct. App. 2015); *Vidovic v. Hoynes*, 29 N.E.3d 338, 316 Ed.Law Rep. 1074 (Ohio Ct. App. 2015).

[40] For a brief, earlier review of some of these points, see D.J. Trunk & C.J. Russo, *Suicide Prevention Hinges on Partnerships, Awareness*, 22(10) Maintaining Safe Schools 6 (2016).

[41] *See supra* notes 5, 22-24, 32.

[42] *See supra* notes 28-33.

[43] *See supra* notes 35-37.

[44] *See supra* notes 38-39.

[45] *See supra* notes 12-20.

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The Two Competing Approaches for Calculating Compensatory Education under the IDEA*

Perry A. Zirkel, Ph.D., J.D., L.L.M.**

Education Law Into Practice
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I. Introduction

Compensatory education has become the primary remedy under the Individuals for Disabilities Education Act for parents who preponderantly prove a denial of the school district's "free appropriate public education" (FAPE) obligation but have not unilaterally placed their child and, thus, have not opted for tuition reimbursement.[1] Indeed, compensatory education has its roots, by way of analogy, in the more established remedy of tuition reimbursement.[2] Yet, the two remedies are generally separate. For example, according to a recent federal appeals court decision, compensatory education is not available for a unilaterally placed private school student.[3]

Within the line of case law for compensatory education,[4] the courts have evolved two distinct approaches for calculating the amount of compensatory education due to the parents in the wake of the district denial of FAPE.[5] The first approach is quantitative based on a one-for-one calculation of the extent of the denial of FAPE. The Third Circuit is the primary locus for developing and refining the quantitative (also known as "cookie cutter")[6] approach, although the majority of lower courts and hearing/review officers in various jurisdictions tend to use it in its unrefined form.[7]

More recently, the D.C. Circuit Court of Appeals developed the qualitative approach, which more flexibly calculates this equitable remedy in terms of placing the child with disabilities in the same position he or should would have occupied but for the school district's violations of the IDEA.[8] The Sixth Circuit adopted this approach in 2007.[9]

Third, emphasizing the equitable flexibility and fluidity of such remedial issues for impartial hearing officers (IHOs), the Ninth Circuit has adopted a less definitive view, sometimes categorized under the qualitative approach but more properly put as flexibly intermediate between the two polar approaches.[10] Moreover, an occasional case in one of the opposite "camps" illustrates overlap either by approximating the logic or outcome of the other[11] or by, in effect, merging the two to create a **hybrid** result.[12]

Finally, although the dividing lines are far from bright, the courts in most other jurisdictions have **followed one or more of these paths: 1) applied the qualitative approach,**[13] **2) implemented a relaxed hybrid approach**[14] or 3) without conclusively adopting either polar approach, limiting themselves to permitting compensatory education awards an ad hoc basis[15] or to embracing one of the two approaches on a nonprecedential basis.[16]

The chart, which is Part II of this brief article, outlines the basic elements of the two polar approaches for calculating the appropriate amount of compensatory education. **Because the qualitative approach is cited more frequently and yet is still developing**, Part III provides an annotated summary of the case law for this newer, more elegant, and more difficult approach.

II. The Calculus for the Two Approaches

Quantitative (i.e., one-for-one)	Qualitative
- duration: the period of denial of FAPE[17] – alternate options of particularized (i.e., service-unit)[18] or total-package[19] basis—criterion of whether the denial of FAPE had a pervasive effect[20] - deduction at the start for period estimated for reasonable rectification[21] - exclusion for absences?[22] - reduction for net inequities in terms of unreasonable parental conduct?[23]	- individualized fact-specific determination of amount "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"[24] • 1) What are the child's "specific educational deficits"? • 2) Which and how much of these specific deficits resulted from the child's "loss of FAPE"? • 3) What are "the specific compensatory measures needed to best correct [the] deficits [in item 2]"[25] - Will there be a deduction for reasonable rectification or unreasonable parental conduct?[26] If so, calculate and explain.

III. Case Law for the Qualitative Approach

This section provides an annotated chronological compilation of the court decisions that have developed and applied the qualitative approach. This gradual judicial evolution, which is largely but not entirely limited to the courts in the D.C. circuit make clear the complexity, both in terms of the procedure and the substance, of calculating a defensible compensatory education award in accordance with this approach.

Reid v. District of Columbia, 401 F.3d 516, 196 Ed.Law Rep. 402 (D.C. Cir. 2005)

• The comp ed award "should aim to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA." (*id*. at 523).

• "designing [the child's] remedy will require a fact-specific exercise of discretion" (*id*. at 524)

• "Some students may require only short, intensive compensatory programs targeted at specific problems or deficiencies. Others may need extended programs, perhaps even exceeding hour-for-hour replacement of time spent without FAPE" (*id*. at 524)

• "courts have recognized that in setting the award, equity may sometimes require consideration of the parties' conduct, such as when the school system reasonably 'require[s] some time to respond to a complex problem,' *M.C.,* 81 F.3d at 397, or when parents' refusal to accept special education delays the child's receipt of appropriate services, *Parents of Student W.,* 31 F.3d at 1497." (*id*. at 524)

• "In every case, however, the inquiry must be fact-specific and, to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*id*. at 524)

• "[the student's] specific educational deficits resulting from his loss of FAPE and the specific compensatory measures needed to best correct those deficits" (*id*. at 525)

• "whereas ordinary IEPs need only provide 'some benefit,' compensatory awards must do more—they must *compensate.*" (*id*. at 525)

• "what services [the student] needs to elevate him to the position he would have occupied absent the school district's failures" (*id*. at 527)

• an IHO may not delegate remedial authority for reducing or discontinuing the amount of compensatory education to the IEP team (i.e., ARD committee), which includes at least one district employee, in light of the IDEA prohibition that the IHO may not be a district employee (*id*. at 526)

Branham v. District of Columbia, 427 F.3d 7, 202 Ed.Law Rep. 610 (D.C. Cir. 2005)

• reversed and remanded **to district court** because the "compensatory [services] award … fails to meet *Reid*'s demanding standard of 'an informed and reasonable exercise of discretion'" (*id*. at 11)—**but discouraging further remand to IHO to "minimize further delay" (*id.* at 13)**

• separately addressed the issue of the student's prospective placement, which requires "insight about the precise types of educational services [the student] needs to progress" (*id*. at 12)

B.C. v. Penn Manor Sch. Dist., 906 A.2d 642, 212 Ed.Law Rep. 801 (Pa. Commw. Ct. 2006)

• adopted qualitative approach for gifted ed cases under state law

• "the student is entitled to an amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district's failure to provide a FAPE." (*id*. at 651)

• "As noted by the District of Columbia Circuit, doing so may require awarding the student more compensatory education time than a one-for-one standard would, while in other situations the student may be entitled to little or no compensatory education, because (s)he has progressed appropriately despite having been denied a FAPE." (*id*. at 651)

Bd. of Educ. of Fayette County v. L.M., 478 F.3d 307, 216 Ed.Law Rep. 354 (6th Cir. 2007)

• adopted the D.C. Circuit's qualitative approach (and its prohibition of delegating the calculation or adjustment to the IEP team)

• "T.D. may well need more than the 125 hours of compensatory education initially awarded by the [IHO], but nothing in the record suggests that he needs hour-for-hour compensation in order to catch up to his peers…. He has been shown to have an IQ score of 105. On the other hand, … [he] reads at only a fifth-grade level despite the fact that he is now in the seventh grade. Although we are dismayed that no one has yet acted to remedy this deficiency during the two and a half years of pending litigation, we find no basis to claim that T.D., a child of average intelligence, needs over 2,400 hours of remedial instruction in order to arrive on an equal footing with his classmates [as a result of denial of FAPE for two school years and a summer]. Such an award, in the absence of strong evidence in the record suggesting that so drastic a remedy is necessary, would border on punishment to the School District rather than an equitable remedy for a child in need." (*id*. at 316-317)

Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt, 532 F. Supp. 2d 121, 229 Ed.Law Rep. 582 (D.D.C. 2008) (*Nesbitt I*)

• vacated the IHO's 3,300-hour comp ed award due to lack of "any explanation or factual support for the formula-based award" (*id*. at 126) and scheduled show-cause status conference due to student's age (approximately 24)

• "A compensatory award constructed with the aid of a formula is not *per se* invalid, however. A formula-based award may in some circumstances be acceptable if it represents an individually-tailored approach to meet a student's unique prospective needs, as opposed to a backwards-looking calculation of educational units denied to a student." (*id*. at 123)

• Upon finding a denial of FAPE but insufficient evidence for calculating a comp ed award, the IHO may "provide the parties additional time to supplement the record" (*id*. at 125).[27]

Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland, 534 F. Supp. 2d 109, 229 Ed. Law Rep. 645 (D.D.C. 2008) (*Bland I*)

• remanded the case due to the IHO's failure to explain how he arrived at the comp ed award of 375 hours

• "The record in this case contains sufficient evidence of T.B.'s unique educational need to allow the Hearing Officer to craft a compensatory education award that is reasonably calculated to place T.B. in the position he would have been in but for the denial of FAPE." (*id*. at 117)

Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland, 555 F. Supp. 2d 130, 234 Ed.Law Rep. 91 (D.D.C. 2008) (*Bland II*)

• upheld award amounting to same, previous cookie-cutter total where IHO considered test results as to the child's deficit and expert testimony as to what the child would need to close the gap

• "the [IHO] must engage in a fact-intensive analysis that includes individualized assessments of the student so that the ultimate award is tailored to the student's unique needs." (*id*. at 135)

D.W. v. District of Columbia, 561 F. Supp. 2d 56, 235 Ed.Law Rep. 271 (D.D.C. 2008).

• ruled that district's failure to provide comp ed was a prejudicial violation and that district's provision of FAPE during the intervening two years did not excuse this obligation

Brown v. District of Columbia, 568 F. Supp. 2d 44, 236 Ed.Law Rep. 798 (D.D.C. 2008); *see also Thomas v. District of Columbia*, 407 F. Supp. 2d 102, 206 Ed.Law Rep. 176 (D.D.C. 2005)[28]

• remanded the case to the IHO for further proceedings to determine "'the amount of compensatory education required to give [the student] the benefits that would likely have accrued had he been given a FAPE'" (*id*. at 54)

Gregory-Rivas v. District of Columbia, 577 F. Supp. 2d 4, 238 Ed.Law Rep. 218 (D.D.C. 2008)

• upheld IHO's denial of compensatory education

• "[The IHO] required that [the parent] establish the type and amount of compensatory services owed to him by [the district] in order to compensate for the services he was denied by [the district]. Because [the parent] failed to make this showing, [the IHO] concluded that any award of compensatory education services would be arbitrary. [His] conclusion and reliance on *Reid* was justified and documented in the record." (*id*. at 10)

Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt, 583 F. Supp. 2d 169, 239 Ed.Law Rep. 380 (D.D.C. 2008) (*Nesbitt II*)

• ordered, upon parent's request at show-cause conference, a new psycho-educational evaluation and vocational assessment in order to craft a compensatory education award

• "That evaluation must be done so the compensatory education plan can be premised on Nesbitt's present abilities, deficiencies, and needs. Simply put, like the hearing officer, I have concluded that Nesbitt is due compensatory education and it is impossible to grant that relief without a conscientious and well-informed evaluation of his present status." (*id*. at 172)

• "I assure him that if [the student] fails to cooperate with the entire evaluation process this case will be promptly dismissed." (*id*. at 172)

Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt, 669 F. Supp. 2d 80, 253 Ed.Law Rep. 347 (D.D.C. 2009) (*Nesbitt III*)[29]

• awarded request comp ed amount, which was same as rejected one-for-one total, after equation-filled discussion and with revision as to GED goal

• "With the completion of the evaluations, I gave [the student] another opportunity to show cause why he should be awarded a compensatory education plan, and he submitted a response that concluded he was entitled to 3,300 hours of tutoring, the exact same amount specified in the award that I vacated. I set an evidentiary hearing where I expected defendant to provide a witness or a number of witnesses to testify, either from personal knowledge, or, if they were appropriately qualified, as experts about the following topics: (1) the level at which the defendant was functioning when he first attended [the school]; (2) the level to which defendant would have progressed during his time at [the school], but for the denial of a FAPE; and (3) why 3,300 hours of tutoring will put the defendant in the position he would have been in but for the denial."

• "Enough of a record and an explanation of [the expert's] qualitative methodology exist for the court to determine that, despite its insufficiencies, the proposed compensatory education plan is 'reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.'"

• "Thus, while I will endorse the attainment of a GED as the framework by which tutors may implement the compensatory education award, the attainment of the GED is neither the purpose of the award nor the likely outcome."

Stanton v. District of Columbia, 680 F. Supp. 2d 201, 255 Ed.Law Rep. 120 (D.D.C. 2010)

• reversed IHO's denial of compensatory education and remanded to the IHO to expeditiously supplement the record with the information needed to "'best correct' [the child's] educational 'deficits'" (citing *Reid*) – the district ultimately did not dispute that it had denied the child FAPE

• "*Reid* certainly does not require plaintiff to have a perfect case to be entitled to a compensatory education award. Once a plaintiff has established that she is entitled to an award, simply refusing to grant one clashes with *Reid*… A hearing officer may "provide the parties additional time to supplement the record" if she believes there is insufficient evidence to support a specific award. *See Nesbitt I,* 532 F. Supp.2d at 125. Choosing instead to award *nothing* does not represent the 'qualitative focus' on [the child's] 'individual needs' that *Reid* requires."

Matanuska-Susitna Borough Sch. Dist. v. D.Y., 54 IDELR ¶ 52 (D. Alaska 2010)

• upheld, after supplemental briefing, $50k compensatory education fund equivalent to approximately 300 hours of speech therapist services plus roughly 208 hours of aide services, at the respective rates of $125 and $60 per hour, or 2.7 hours of speech services and 1.9 hours of aide services per week for 3 school years

• equitably calculated to put the child "in the place he would have been in absent the [34 months of] District's LRE and Dynavox violations."

Wheaten v. District of Columbia, 55 IDELR ¶ 12 (D.D.C. 2010), *aff'd mem*., WL 5372181 (D.C. Cir. 2010)

• denied compensatory education where IHO found that school district's subsequent private placement of the child remedied the denial of FAPE

Gill v. District of Columbia, 751 F. Supp. 2d 104, 265 Ed.Law Rep. 669 (D.D.C. 2010), *further proceedings*, **770** F. Supp. 2d **112**, 268 Ed.Law Rep. 761 (D.D.C. 2011)

• after IHO found denial of FAPE but refused compensatory education based on parents' failure to provide sufficient factual foundation (for qualitative approach), court allowed parent limited opportunity via its authority to hear additional evidence; however, the court subsequently did not award compensatory education, concluding that the additional evidence was "sketchy and patently insufficient"

B.H. v. W. Clermont Bd. of Educ., **788** F. Supp. 2d **682**, 272 Ed.Law Rep. 445 (S.D. Ohio 2011)

• upheld two years of PT and OT and two of three years of private placement as compensatory education, which was close to quantitative approach, as permissible in qualitative jurisdiction

***Woods v. Northport Pub. Sch.*, 487 F. App'x 968, 287 Ed.Law Rep. 746 (6th Cir. 2012)**

• upheld, in a relaxed application of the qualitative approach, a 758-hour compensatory education award for two-year denial of FAPE (12 hours for each of 64 weeks of denial) for the child to "reasonably recover" in light of potentially closing window of opportunity, plus upheld requirement that the delivery be via a teacher with autism certification due to this provision in the IEP

***Cousins v. District of Columbia*, 880 F. Supp. 2d 142, 287 Ed.Law Rep. 901 (D.D.C. 2012)**

• reversed IHO's award of no compensatory education, concluding instead that the experts had provided sufficient evidence for each of the *Reid* factors for the qualitative approach

Phillips v. District of Columbia, 736 F. Supp. 2d 240, 263 Ed.Law Rep. 614 (D.D.C. 2010), ***after remand*, 932 F. Supp. 2d 42, 296 Ed.Law Rep. 366 (D.D.C. 2013)**

• vacated IHO's award of 255 hours of compensatory education due to parent's failure (via her expert) to provide information as to how these additional hours of tutoring would provided the educational benefits that likely would have accrued had the district provided FAPE in the first place

• remanded to the IHO "to allow plaintiff to supplement the record in order to establish a reasonably calculated and individually-tailored compensatory education award that demonstrates a causal relationship between [the child's] current educational deficits and his earlier denial of a [FAPE]"

• upheld IHO's "inherent" authority" to order an evaluation (at district expense) that would help determine the amount of compensatory education under the *Reid* standard

• upheld IHO's denial of compensatory education, after expert witnesses and additional IHO-arranged expert report, based on conclusion that the child's "current difficulties do not stem from the original denial of a FAPE"

***Dep't of Educ., State of Haw. v. R.F.*, 61 IDELR ¶ 127 (D. Haw. 2013)**

• upheld award resulting from separate compensatory education hearing that provided 16 months of private school services, including two summers of ESY, for a three-year denial of FAPE as complying with the *Reid* approach based on expert testimony and the child's successful experience at the private school

***District of Columbia v. Masucci*, 13 F. Supp. 3d 33, 309 Ed.Law Rep. 1023 (D.D.C. 2014)**

• granted stay of IHO's order of private school placement as compensatory education due to likelihood of success on appeal that the IHO did not show how this order met standards for qualitative calculation

***I.S. ex rel. Sepiol v. Sch. Town of Munster*, 64 IDELR ¶ 40 (N.D. Ind. 2014)**

• remanded to IHO, in light of expertise, to "determine the amount of compensation required to put [child] in the position he would have been in had he received a [FAPE] during the time periods at issue, specified as from inception of the inappropriate program to the deadline for compliance with the IHO's original order and presuming that in this case that it would be in the form of tuition reimbursement

***Fullmore v. District of Columbia*, 40 F. Supp. 3d 174, 313 Ed.Law Rep. 730 (D.D.C. 2014)**

• ruled that IHO's granting of parent's other requested remedy of an IEE does not moot the claim for compensatory education to the extent that the challenged reevaluation was inappropriate and resulted in denial of FAPE

***Cupertino Union Sch. Dist. v. K.A.*, 75 F. Supp. 3d 1088, 319 Ed.Law Rep. 352 (N.D. Cal. 2014)**

• vacated "essentially day-for-day compensatory education to achieve an undefined level of "educational progress" as lacking evidentiary support and remanding the remedy to the IHO with suggestions to consider ordering a new IEP meeting or referring the matter to mediation and with instructions to focus on the child's "present needs and the degree to which those needs can be rectified by the District's services," including consideration of "any positive effects that the District's limited services provided, balanced against factors—such as physical considerations and removal from school—over which the District had no control"

***Copeland v. District of Columbia*, 82 F. Supp. 3d 462, 320 Ed.Law Rep. 737 (D.D.C. 2015)**

• ruled that IHO did not provide sufficient explanation of his compensatory education calculus

***Kelsey v. District of Columbia*, 85 F. Supp. 3d 327, 320 Ed.Law Rep. 1025 (D.D.C. 2015)**

• rejected parent's challenge to IHO's compensatory education award of "1.5 hours of services for every hour of services she missed, provided by a professional speech language therapist who has experience with working with older students"—sufficiently explained in accordance with *Reid* qualitative approach

***B.D. v. District of Columbia*, 817 F. 3d 792, 329 Ed.Law Rep. 612 (D.C. Cir. 2016)**

• remanding IHO's compensatory education award of OT as not either addressing educational losses or providing reasoned explanation for failing to do so, with suggestion of an order for assessment if needed (and for updating or supplementing the award based on the assessment)-also identified "the time of the new award" at the reference point for determining the amount needed to restore the child to the position s/he would have been had the district not denied him a FAPE for the period in question

***Brown v. District of Columbia*, 67 IDELR ¶ 169 (D.D.C. 2016)**

• awarding "robust remedy" of compensatory education in the form of tuition and transportation at present vocational school placement going back 2.3 years

***Hill v. District of Columbia*, 68 IDELR ¶ 133 (D.D.C. 2016)**

• in light of 19-year-old's limited remaining period of eligibility and the sufficient record in this case, opting not to remand and instead to order compensatory education of 50 hours of counseling (based on "demonstrated need and the already-significant delay") plus 178.1 hours of academic tutoring (based on 1-to-5 ratio of 890.5 hour total of failure-to-implement denial of FAPE), in addition to notable other relief

***Damarcus S. v. District of Columbia*, __ F. Supp. 3d __, __ Ed.Law Rep. __ (D.D.C. 2016)**

• remanding for re-computing the compensatory education award of 50 hours of behavioral services to be forfeited if not used within a year because (a) the award and its temporal cap lacked sufficient justification, (b) the impact of the behavioral violation was pervasive, and (c) the two other denials of FAPE needed to be included in the qualitative analysis

***Lopez-Young v. District of Columbia*, __ F. Supp. 3d __, __ Ed.Law Rep. __ (D.D.C. 2016)**

• remanding to IHO for determination of compensatory education award, including authority to order independent evaluation for this purpose if the parent sufficiently showed its necessity

ENDNOTES

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[1] *E.g.,* **Perry A. Zirkel, *Compensatory Education: Another Annotated Update of the Law*., 336 Educ. L. Rep. 654 (2016); Perry A. Zirkel, *Compensatory Education: Another Annotated Update of the Law*., 291 Educ. L. Rep. 1 (2013);** Perry A. Zirkel, *Compensatory Education An Annotated Update of the Law*, 251 Educ. L. Rep. 501 (2010); Perry A. Zirkel, *Compensatory Education Services under the IDEA: An Annotated Update*, 190 Educ. L. Rep. 745 (2004); Perry A. Zirkel & M. Kay Hennessy, *Compensatory Educational Services in Special Education Cases*, 150 Educ. L. Rep. 311 (2001); Perry A. Zirkel, *The Remedy of Compensatory Education under the IDEA,* 95 Educ. L. Rep. 483 (1995); Perry A. Zirkel, *Compensatory Educational Services in Special Education Cases,* 67 Educ. L. Rep. 881 (1991).

[2] *See, e.g.,* Perry A. Zirkel, *Compensatory Education under the Individuals with Disabilities Education Act: The Third Circuit's Partially Mis-Leading Position*, 111 Penn. State L. Rev. 879 (2006). Unlike compensatory education, tuition reimbursement is codified in the IDEA, and it has been the subject of Supreme Court decisions. *See, e.g.,* Forest Grove Sch. Dist. v. T.A., **557 U.S. 230** (2009).

[3] P.P. v. West Chester Area Sch. Dist., 585 F.3d 727, 250 Ed.Law Rep. 517 (3d Cir. 2009).

[4] Except for brief mention in relation to the state complaint process **(34 C.F.R. § 300.151(b)(1))**, the IDEA regulations do not codify compensatory education, leaving its details to the case law under the broad remedial authority that the legislation accords explicitly to the courts and implicitly to hearing and review officers. *See, e.g.,* Perry A. Zirkel, *The Remedial Authority of Hearing and Review Officers under the IDEA: An Update*, 31 J. Nat'l Ass'n of Admin. L. Judiciary 1 (2011).

[5] The focus here is on the method for calculating compensatory education, not on overlapping issues, such as whether the IDEA allows the hearing officer to delegate the calculation or its adjustment to the IEP team. For the delegation issue, *see, e.g.*, Bd. of Educ. of Fayette County v. L.M., 478 F.3d 307, 318, 216 Ed.Law Rep. 354 (6th Cir. 2007); Reid v. District of Columbia, 401 F.3d 516, 526, 196 Ed.Law Rep. 402 (D.C. Cir. 2005); **Meza v. Bd. of Educ., 56 IDELR ¶ 167 (D.N.M. 2011). *But see* Mr. I. v. Me. Sch. Admin. Unit No. 55, 480 F.3d 1, 217 Ed.Law Rep. 60 (1st Cir. 2007); Struble v. Fallbrook Union Sch. Dist., 56 IDELR ¶ 4 (S.D. Cal. 2011); *cf.* Sch. Dist. of Phila. v. Williams, 66 IDELR ¶ 214 (E.D. Pa. 2015); T.G. v. Midland Sch. Dist., 848 F. Supp. 2d 902, 282 Ed.Law Rep. 425 (C.D. Ill. 2012); A.L. v. Chicago Pub. Sch. Dist., 57 IDELR ¶ 215 (N.D. Ill. 2011); State of Haw., Dept. of Educ. v. Zachary B., 52 IDELR ¶ 213 (D. Haw. 2009).**

[6] **Reid v. District of Columbia, 401 F.3d 516, 523, 196 Ed.Law Rep. 402 (D.C. Cir. 2005).**

[7] **However, recent decisions within and at the Third Circuit seem to signal a movement toward the qualitative approach. See *infra* note 12.**

[8] The seeds of this approach can be found in scattered earlier cases at lower levels. *See, e.g.*, Sanford Sch. Comm. v. Mr. & Mrs. L, 34 IDELR ¶ 262 (D. Me. 2001) (harm to the child as a result of loss of FAPE). However, Judge David Tatel gave it full elaboration and federal appellate authority in *Reid v. District of Columbia*, 401 F.3d 516, 196 Ed.Law Rep. 402 (D.C. Cir. 2005).

[9] Bd. of Educ. of Fayette County v. L.M., 478 F.3d 307, 216 Ed.Law Rep. 354 (6th Cir. 2007).

[10] *E.g.,* Park v. Anaheim Union High Sch. Dist., 464 F.3d 1025, 213 Ed.Law Rep. 122 (9th Cir. 2006) (upholding IHO's award of 30 min./wk. of training for the child's teachers for a period approximating the denial of FAPE, observing that "[t]he testimony was unclear whether Joseph would benefit from direct compensatory education" and that the award was "designed to compensate Joseph for the District's violations by better training his teachers to meet Joseph's particular needs"); *P*arents of Student W. v. Puyallup School Dist., 31 F.3d 1489, 93 Ed.Law Rep. 547 (9th Cir. 1994) (upholding district court's denial of comp ed for 1.5 year loss of FAPE in light of student's general progress and parent's unreasonable conduct, commenting that "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA."). However, more recently in dicta the Ninth Circuit appeared to endorse specifically the qualitative approach. **R.P. v. Prescott Unified Sch. Dist**., 631 F.3d 1117, 1125, 264 Ed.Law Rep. 618 (9th Cir. 2011).

[11] *E.g.*, Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt, 669 F. Supp. 2d 80, 253 Ed.Law Rep. 347 (D.D.C. 2009) (qualitative approach for quantitative outcome).

[12] *E.g.*, Ferren C. v. Sch. Dist. of Phila., 595 F. Supp. 2d 566, 241 Ed.Law Rep. 771 (E.D. Pa. 2009) (citing case law under both results to shape special-circumstances outcome). **On appeal, the Third Circuit affirmed, citing *Reid* but concluding that the equitable outcome would be on a case-by-case basis. Ferren C. v. Sch. Dist. of Phila., 612 F.3d 712, 259 Ed.Law Rep. 37 (3d Cir. 2010). Some Pennsylvania hearing officers subsequently interpreted this decision as signaling the move from a quantitative to qualitative approach. *E.g.*, Sch. Dist. of Phila., 58 IDELR ¶ 206 (Pa. SEA 2012). For recent decisions that appear to validate this interpretation, *see* Jana K. v. Annville-Cleona Sch. Dist., 39 F. Supp. 3d 584, 608, 313 Ed.Law Rep. 702 (E.D. Pa. 2014); Cent. Sch. Dist. v. K.C., 61 IDELR ¶ 125 (E.D. Pa. 2013); *cf.* A.W. v. Middletown Area Sch. Dist., 68 IDELR ¶ 247 (M.D. Pa. 2016). For parallel blurring in Pennsylvania's state courts, a recent IDEA decision cited as support for a one-hour per day award, without distinguishing it, a precedent for the qualitative approach in the context of gifted education. Pennsbury Sch. Dist. v. C.E., 59 IDELR ¶ 13 (Pa. Commw. Ct. 2012). Yet, the courts in New Jersey seem to adhere more strictly to the quantitative approach. *E.g.*, A.S. v. Harrison Twp. Bd. of Educ., 67 IDELR ¶ 207 (D.N.J. 2016).**

[13] ***E.g.*, Dep't of Educ., State of Haw. v. R.H., 61 IDELR ¶ 127 (D. Haw. 2013); Mt. Vernon Sch. Corp. v. A.M., 59 IDELR ¶ 100 (S.D. Ind. 2012); B.T. v. Dep't of Educ., 676 F. Supp. 2d 982, 254 Ed.Law Rep. 212 (D. Haw. 2010); R.M. v. Miami-Dade Cty. Sch. Bd., 55 IDELR ¶ 261 (S.D. Fla. 2010); *cf.* T.G. v. Midland Sch. Dist., 848 F. Supp. 2d 902, 282 Ed.Law Rep. 425 (C.D. Ill. 2012) (qualitative approach but with flexible deference for IHO). For advocacy of such a flexible hybrid approach, see Terry J. Seligmann & Perry A. Zirkel, *Compensatory Education for IDEA Violations: The Silly Putty of Remedies?* 45 Urb. Law. 281 (2013).**

[14] *E.g.,* Woods v. Northport Sch. Dist., 487 F. App'x 968, 287 Ed.Law Rep. 746 (6th Cir. 2012); **Maple Heights City Sch. Bd. of Educ., 68 IDELR ¶ 5 (N.D. Ohio 2016); Oskowis v. Sedona-Oak Creek Unified Sch. Dist., 67 IDELR ¶ 150 (D. Ariz. 2016);** B.H. v. W. Clermont Bd. of Educ., 788 F. Supp. 2d 682, 272 Ed.Law Rep. 445 (S.D. Ohio 2011); D.G. v. Flour Bluff Indep. Sch. Dist., 832 F. Supp. 2d 755, 280 Ed.Law Rep. 132 (S.D. Tex. 2011) (qualitative approach yielding result that approximates quantitative approach), *vacated*, 481 F. App'x 887, 286 Ed.Law Rep. 131 (5th Cir. 2012); Hollister Sch. Dist., 60 IDELR ¶ 172 (Cal. SEA 2013); Sch. Dist. of Phila., 57 IDELR ¶ 86 (Pa. SEA 2011); *cf.* Dracut Sch. Comm. v. Bureau of Special Educ. Appeals, 737 F. Supp. 2d 35, 263 Ed.Law Rep. 625 (D. Mass. 2010) (citing Puffer v. Raynolds, 761 F. Supp. 838, 853, 67 Ed.Law Rep. 536 (D. Mass. 1988) for FAPE "equal in time and scope" with what a student would have received while eligible).

[15] *E.g.,* Draper v. Atlanta Sch. Sys., 518 F.3d 1275, 230 Ed.Law Rep. 545 (11th Cir. 2008) (affirming prospective private school placement as allowable compensatory education under abuse of discretion review standard for district court's decision).

[16] *E.g.,* State of Haw. v. Zachary B., 52 IDELR ¶ 213 (D. Haw. 2009); Petrina W. v. City of Chicago Pub. Sch. Dist. 299, 53 IDELR ¶ 259 (N.D. Ill. 2009) (unpublished district court decisions that adopted qualitative approach).

[17] *E.g.*, Westendorp v. Indep. Sch. Dist. No. 273, 35 F. Supp. 2d 1134, 133 Ed.Law Rep. 97 (D. Minn. 1998). **However, the effect of the IDEA's limitation period for filing for the impartial hearing is a significant factor in light of G.L. v. Ligonier Valley Sch. Auth., 802 F.3d 601, 322 Ed.Law Rep. 633 (3d Cir. 2015). *See, e.g.*, Perry A. Zirkel, *Of Mouseholes and Elephants: The Statute of Limitations for Impartial Hearings under the Individuals with Disabilities Education Act*, 35 J. Nat'l Ass'n Admin. L. Judiciary 305 (2015).**

[18] *E.g.,* **G.D. v. Wissahickon Sch. Dist., 832 F. Supp. 2d 455, 280 Ed.Law Rep. 71 (E.D. Pa. 2011); Dudley v. Lower Merion Sch. Dist., 58 IDELR ¶ 12 (E.D. Pa. 2011); Breanne C. v. S.**

York Cty. Sch. Dist., 732 F. Supp. 2d 474, 263 Ed.Law Rep. 122 (M.D. Pa. 2010); Neena S. v. Sch. Dist. of Phila., 51 IDELR ¶ 210 (E.D. Pa. 2008); Heather D. v. Northampton Area Sch. Dist., 511 F. Supp. 2d 549, 225 Ed.Law Rep. 571 (E.D. Pa. 2007); D.H. v. Manheim Twp. Sch. Dist., 45 IDELR ¶ 38 (E.D. Pa. 2005); Quintana v. Dep't of Educ. of P.R., 30 IDELR 503 (P.R. Ct. App. 1998).

[19] *E.g.,* Keystone Cent. Sch. Dist. v. E.E., 438 F. Supp. 2d 519, 211 Ed.Law Rep. 772 (E.D. Pa. 2006); cf. Sch. Dist. of Phila. v. Deborah A., 52 IDELR ¶ 67 (E.D. Pa. 2009) (pervasive enough for full day); Argueta v. District of Columbia, 355 F. Supp. 2d 408 (D.D.C. 2005) (special ed and related services specified in IEP but that district failed to provide).

[20] Sch. Dist. of Phila. v. Deborah A., 52 IDELR ¶ 67 (E.D. Pa. 2009).

[21] *See, e.g.*, M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 397, 108 Ed.Law Rep. 522 (3d Cir. 1996) ("the time reasonably required for the school district to rectify the problem"); *see also* E. Penn Sch. Dist. v. Scott P., 29 IDELR 1058 (E.D. Pa. 1999), *further proceedings*, 30 IDELR 129 (E.D. Pa. 1999). **For an exception, see Tyler W. v. Perkiomen Sch. Dist., 963 F. Supp. 2d 427, 301 Ed.Law Rep. 777 (E.D. Pa. 2013).**

[22] *See, e.g.*, **Dudley v. Lower Merion Sch. Dist., 58 IDELR ¶ 12 (E.D. Pa. 2011);** *cf*. Neena S. v. Sch. Dist. of Phila., 51 IDELR ¶ 210 (E.D. Pa. 2008) (extended periods). ***But cf.*** **Linda E. v. Bristol Warren Reg'l Sch. Dist., 758 F. Supp. 2d 75, 266 Ed.Law Rep. 718 (D.R.I. 2010) (no deduction for missing inappropriate services).**

[23] *See, e.g.*, Garcia v. Bd. of Educ., 520 F.3d 1116, 231 Ed.Law Rep. 25 (10th Cir. 2008); Moubry v. Indep. Sch. Dist. No. 696, 27 IDELR 469 (D. Minn. 1997); ***cf.*** **R.L. v. Miami Dade Cty. Sch. Bd., 757 F.3d 1173, 307 Ed.Law Rep. 596 (11th Cir. 2014); Torda v. Fairfax Cty. Sch. Bd., 517 F. App'x 162 (4th Cir. 2013),** ***cert. denied*****, 134 S. Ct. 1538 (2014).**

[24] Reid v. District of Columbia, 401 F.3d 516, 524, 196 Ed.Law Rep. 402 (D.C. Cir. 2005). **The court also provided this alternative wording: "[what services, if any, were required] to place [the child] in the same position [he] would have occupied but for the district's violations of IDEA."** ***Id.*** **at 518. For the adjudicative difficulties, including time-consuming transaction costs, of implementing this overall approach, *see, e.g.*, Phillips v. District of Columbia, 932 F. Supp. 2d 42, 296 Ed.Law Rep. 366 (D.D.C. 2013) (upholding IHO decision denying compensatory education for a denial of FAPE seven years earlier due to parents' failure to provide evidence that met *Reid* standard after repeated opportunities).**

[25] Reid v. District of Columbia, 401 F.3d at 525. **The court more recently identified the "time of the . . . award" as the point for calculating the requisite amount. B.D. v. District of Columbia, 817 F.3d 792, 799, 329 Ed.Law Rep. 612 (D.C. Cir. 2016).**

[26] Reid v. District of Columbia, 401 F.3d at 524 (recognizing this equitable consideration but subsuming it within the overall qualitative standard); Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt, 583 F. Supp. 2d 169, 172, 239 Ed.Law Rep. 380 (D.D.C. 2008) (dicta warning about contingency of student cooperation).

[27] For a more recent decision supporting additional IHO fact-finding for the calculation question, *see* Banks v. District of Columbia, 720 F. Supp. 2d 83, 261 Ed.Law Rep. 626 (D.D.C. 2010).

[28] For this court's other, more recent remands to determine the amount of compensatory education, in addition to those excerpted *infra*, *see* Walker v. District of Columbia, **786** F. Supp. 2d **232**, 272 Ed.Law Rep. 192 (D.D.C. 2011); Long v. District of Columbia, **780** F. Supp. 2d **49**, 270 Ed.Law Rep. 664 (D.D.C. 2011); **Wilson v. District of Columbia, 770 F. Supp. 2d 270, 268 Ed.Law Rep. 774 (D.D.C. 2011);** Henry v. District of Columbia, 750 F. Supp. 2d 94, 265 Ed.Law Rep. 601 (D.D.C. 2010).

[29] The court subsequently denied the district's motion for a stay pending appeal. Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt, 704 F. Supp. 2d 50, 259 Ed.Law Rep. 46 (D.D.C. 2010) (rejecting district's argument that projected cost of $198k was irreparable injury).

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