School Law Update 2015

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Recent Developments in Education Law

- Recent Court Decisions
- Bullying
- School Discipline
- New Guidance From the U.S. Department of Education

Relevant Federal Laws

1. Individuals with Disabilities Education Act (IDEA) 20 U.SC. § 1400 *et seq.*
   - U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS)
2. Title II of the Americans with Disabilities Act (Title II) 42 U.SC. § 12132 *et seq.*
   - U.S. Department of Education, Office for Civil Rights (OCR)
3. Section 504 of the Rehabilitation Act of 1973 (Section 504) 29 U.SC. § 794 *et seq.*
   - U.S. Department of Education, Office for Civil Rights (OCR)

Individuals with Disabilities Education Act

"Congress enacted IDEA ... to ensure that all children with disabilities are provided 'a *free appropriate public education* which emphasizes special education and related services designed to meet their unique needs.'"

Forest Grove School Dist. v. TA, 557 U.S. 230 (2009).

Title II of the ADA

"... no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.SC. § 12132 *et seq.*

Section 504

"No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ." 29 U.SC. § 794 *et seq.*

Federal Court Decision

O.S. v. Fairfax Co. Board of Educ.

U.S. Court of Appeals for the Fourth Circuit, Appeal No. 14-1994, October 19, 2015

IDEA

O.S. v. Fairfax Co. Board of Educ.

The U.S. Court of Appeals for the Fourth Circuit is the appellate court that hears appeals from U.S. District Courts in Maryland, Virginia, West Virginia, North Carolina and South Carolina.

IDEA

O.S. v. Fairfax Co. Board of Educ.

The Fourth Circuit recently issued an opinion in which it considered whether the standard a court applies to decide when a school system IEP offers a student FAPE.

IDEA

O.S. v. Fairfax Co. Board of Educ.

FACTS

Plaintiff O.S. had a seizure disorder, a congenital heart defect, and "tongue-tie" syndrome, or ankyloglossia, which can interfere with communication.

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

O.S. was found eligible for special education services as "Other Health Impaired." The school system first developed an IEP for his kindergarten year.

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

Kindergarten IEP:

- Special Education: 15 hrs./week (30 hour instructional week) provided in general education classroom, by special educator/instructional assistant
- Occupational Therapy: 2 hrs./month (30 min./week)
- Assisted Phys. Ed.: 2 hrs./month

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

Kindergarten IEP:

- Speech and Language Therapy:
  - 4 hrs./month of Speech (1 hr./week) added after IEP initially developed
  - 6 hrs./month after later increase

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

First Grade IEP:

- Goals addressed:
  - communication
  - reading readiness
  - writing
  - writing readiness
  - math
  - attending skills
  - adapted physical education

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

First Grade IEP:

- Special Education Services: 15 hrs./week
  - 10 hours in special education classroom, by special educator/instructional assistant
  - 5 hours in general education classroom, by special educator/instructional assistant

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

First Grade IEP:

- Occupational Therapy: 2 hrs./month
- Adapted Phys. Ed.: 4 hrs./month
- Speech: 6 hrs./month

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

O.S. missed "over" 30 days of school, and missed part of another 20 days, during first grade.

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

Second Grade IEP:

- Developed at the end of first grade.
- Team reviewed:
  - FCPS psychological assessment
  - FCPS educational assessment
  - FCPS sociocultural assessment
  - KKI test results submitted by parents
- O.S. remained eligible

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

Second Grade IEP:

- Goals addressed:
  - communication
  - writing
  - reading
  - math
  - organization
  - behavior

IDEA

O.S. v. Fairfax Co. Board of Educ.

FACTS

Second Grade IEP:

- Special Education Services: 15 hrs./week
  - "more" hours in general education classroom, by special educator/instructional assistant
- Occupational Therapy: 2 hrs./month
- Speech: 6 hrs./month

IDEA

O.S. v. Fairfax Co. Board of Educ.

FACTS

Second Grade IEP:

Parents asked that O.S.'s IEP include:

- 1:1 aide
- ESY services
- full-time nurse assigned to O.S.'s school

School System did not agree to including on IEP.

IDEA

O.S. v. Fairfax Co. Board of Educ.

FACTS

O.S.'s parents requested a due process hearing, alleging six denials of FAPE:

1. Inadequate special education services in reading, math and writing (K & 1st)
2. Inadequate occupational and speech therapy (K & 1st)
3. Failure to provide ESY (K & 1st)
4. Failure to provide a 1:1 aide (K & 1st)
5. Failure to provide a full-time nurse, posing a risk to O.S.'s safety (K & 1st)
6. Failure to develop an appropriate second grade IEP

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

Three-day due process hearing:
- 14 witnesses testified
- Over 200 exhibits introduced
- Parents' only witnesses were parents

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

- Parents relied on results of Kaufman Test of Educational Achievement, Woodcock-Johnson 3rd Edition, and FCPS's own "sociocultural evaluation" to argue that O.S. had regressed over past 2 years

IDEA

O.S. v. Fairfax Co. Board of Educ.
FACTS

Administrative Decision:
- FCPS offered FAPE; and
- School system teachers and educational experts were particularly credible witnesses

IDEA

O.S. v. Fairfax Co. Board of Educ.

FACTS

O.S.'s parents challenged the Administrative Decision in U.S. District Court.

Parents and school system moved for judgment on the administrative record.

IDEA

O.S. v. Fairfax Co. Board of Educ.

FACTS

U.S. District Court judge determined that the hearing officer's findings were regularly made and therefore entitled to deference.

As a result, the district court upheld the administrative decision, including the conclusion that FCPS provided FAPE.

IDEA

O.S. v. Fairfax Co. Board of Educ.

Parents appealed to the U.S. Court of Appeals for the Fourth Circuit.

IDEA

O.S. v. Fairfax Co. Board of Educ.

Parents appealed to the U.S. Court of Appeals for the Fourth Circuit. O.S.'s parents raised the issue of how the U.S. District Court assessed whether FCPS provided FAPE.

IDEA

O.S. v. Fairfax Co. Board of Educ.

Specifically, Parents argued that courts:

- –should consider whether student received "meaningful" educational benefit
- –NOT "some" educational benefit

Parents argued that, because the district court just found "some" educational benefit, its decision was wrong.

IDEA

O.S. v. Fairfax Co. Board of Educ.

- U.S. Supreme Court: no "requirement that the services ... maximize each child's potential" and instead FAPE requires school systems to "confer some educational benefit upon the handicapped child."

Hendrick Hudson Dist. Bd. Of Educ. v. Rowley, 458 U.S. 176 (1982)

IDEA

O.S. v. Fairfax Co. Board of Educ.

- Parents argued that this standard was altered by congressional revisions to the IDEA in 1997 and 2004.

IDEA

O.S. v. Fairfax Co. Board of Educ.

- For example, the 2004 amendments included Congressional findings that "education of children with disabilities can be made more effective by having **high expectations** for such children and ensuring their access to the general education curriculum in the regular classroom, **to the maximum extent possible.**"

IDEA

O.S. v. Fairfax Co. Board of Educ.

Parents noted that the U.S. Court of Appeals for the Ninth Circuit has made a distinction between "meaningful" and "some" educational benefit.

IDEA

O.S. v. Fairfax Co. Board of Educ.

The Fourth Circuit said:

1. If Congress uses legislation to overrule Supreme Court decisions, it does so explicitly (e.g., the Lily Ledbetter Fair Pay Act; the Religious Freedom Restoration Act).

IDEA

O.S. v. Fairfax Co. Board of Educ.

The Fourth Circuit said:

2.The 1997 and 2004 IDEA amendments made specific, concrete changes to provisions of the IDEA (e.g., basing instruction on peer-reviewed research); nothing explicitly changed the standard for determining when a school system provided FAPE.

IDEA

O.S. v. Fairfax Co. Board of Educ.

Alternately, parents argued that determining that O.S. had received FAPE was clear error because test results (i.e., Woodcock-Johnson and Kaufman) indicated a lack of progress and, in fact, regression.

IDEA

O.S. v. Fairfax Co. Board of Educ.

The Fourth Circuit said the hearing officer had considered this issue, but that he gave greater weight to testimony from school witnesses that student had made progress

IDEA

O.S. v. Fairfax Co. Board of Educ.

The Fourth Circuit concluded:

- that the hearing officer correctly considered testimony and evidence in concluding that O.S. did not need a 1:1 aide or full-time nurse, or ESY;
- and that the U.S. District Court had not erred in upholding the administrative decision.

IDEA

Federal Court Decision

E.L. v. Chapel Hill-Carrboro Board of Educ.

U.S. Court of Appeals for the Fourth Circuit, 773 F.3d 509 2014

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

The Fourth Circuit recently issued an opinion in which it considered whether the standard a court applies to decide when a school system IEP offers a student FAPE.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

Plaintiff E.L. was a 3-year-old girl experiencing global developmental delays. The local school board developed an IEP based on a disability code of Autism.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

The initial IEP, for the 2008-2009 school year, placed E.L. in a partial-day preschool program at a child development institute of the University of North Carolina.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

The initial IEP also included service hours for speech and language services, occupational therapy, and physical therapy, all provided in the institute setting.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

The IEP developed for the 2009-2010 school year continued placement at the UNC institute 2 days per week.

The other 3 days, the student was placed in a nonpublic special education school.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

Midway through the 2009-2010 school year, E.L.'s parents withdrew her from the institute and placed her full-time in the nonpublic school.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

E.L.'s Parents requested a due process hearing, alleging that the school system had failed to provide FAPE to E.L. during the time she was at the UNC institute.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

Parents and the school system had a 14-day hearing before an administrative law judge.

In the Administrative Decision, the administrative law judge found that – in almost all services – the school system had provided FAPE.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

Except the administrative law judge found that the school system had not provided appropriate speech and language services, and ordered that parents be reimbursed for private services.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

The school board appealed to a "state review officer" – an intermediary administrative appeal in North Carolina, between the administrative law judge and the U.S. District Court. This level of administrative hearings is not in place in Maryland.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

Parents responded to the school board's appeal to the state review officer.

However, parents did not request that the officer also review the portions of the administrative decision finding that the school board <u>had</u> provided FAPE.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

That review officer overturned the administrative decision about speech services.

The rest of the administrative decision – in favor of the school system – was upheld on that review.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

Parents appealed to the U.S. District Court. They argued that E.L.'s IEPs were not appropriate because, during her time at the institute, she did not receive 1:1 ABA instruction.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.
FACTS

The District Court upheld the decision by the state review officer. E.L.'s parents appealed to the U.S. Court of Appeals for the Fourth Circuit.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

The Fourth Circuit would not hear Parents' appeal regarding E.L.'s need for 1:1 ABA services, because they had not raised that issue as an appeal to the state review officer.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

Since parents did not file an appeal to the state review officer, the Fourth Circuit determined that they had not exhausted administrative remedies, which means that in most cases the issue cannot be considered by federal courts.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

The Fourth Circuit did consider the Parents' appeal of the state review officer's decision that there was no violation regarding speech services.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

In finding a failure to provide appropriate speech services, the administrative law judge considered three factors:

1. Some services were provided by speech interns;
2. Services were not provided in a 1:1 setting; and
3. The speech supervisor had shredded her notes, so could not produce them to demonstrate that services were appropriately provided.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

In considering the appeal on speech services, the state review officer dismissed these reasons.

1.The state review officer found evidence that the speech interns were "supervised" by the institute's speech therapist, and she was in the room while interns were providing services.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

2. The state review officer concluded that 1:1 speech services were not required by the IEP, and could be provided in an "embedded, inclusive" setting.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

A speech therapist at the institute testified at the hearing that she believed E.L. needed attention outside of the classroom setting. However, the institute's administration felt that was contrary to its methodology.

As a result, the speech therapist resigned. The state review officer concluded that this was a methodological disagreement, and didn't demonstrate a failure to provide services.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

3. Finally, the state review officer reviewed the testimony of the speech supervisor, and concluded it was standard practice for her to shred her notes at the end of the school year. The review officer determined that this did not, on its own, demonstrate a failure to provide services.

IDEA

E.L. v. Chapel Hill-Carrboro Bd. of Educ.

The Fourth Circuit reviewed the state review officer's conclusions, and found that they were supported by sufficient evidence. As a result, the Fourth Circuit upheld the state review officer's findings, and the U.S. District Court decision that also reached the same conclusion.

IDEA

Federal Court Decision

M.L. v. Joshua Starr

U.S. District Court for the District of Maryland, Civil Action No. 14-cv-1679, August 3, 2015

IDEA

M.L. v. Starr
FACTS

Plaintiff M.L. was a 9-year-old Orthodox Jewish boy with Down Syndrome. He was placed in a local Hebrew academy's full-time special-education program at parent expense.

IDEA

M.L. v. Starr
FACTS

M.L.'s parents asked Montgomery County Public Schools to fund M.L. in that private placement.

IDEA

M.L. v. Starr
FACTS

Parents and MCPS proceeded with the IEP development process. M.L.'s parents wanted his IEP to incorporate the "basics of Orthodox Jewish life"

IDEA

M.L. v. Starr
FACTS

The parents asked that the IEP include goals and objectives oriented toward the laws and customs of Orthodox Judaism.

IDEA

M.L. v. Starr
FACTS

In particular, parents requested goals addressing Hebrew literacy, identification of Kosher symbols, and telling time in order to abide by rules separating consumption of meat and dairy.

IDEA

M.L. v. Starr
FACTS

M.L.'s parents felt such instruction was necessary to prepare M.L. for life in his Orthodox Jewish community.

IDEA

M.L. v. Starr
FACTS

MCPS staff on the IEP Team said that the goals requested by parents were:

- Not part of the curriculum
- Too specific
- Religious, and
- Not compatible with M.L.'s present levels.

IDEA

M.L. v. Starr
FACTS

MCPS completed the IEP:

- 16 areas addressed in goals & objectives
- 28.75 hrs./week of special education services
- OT, speech/language
- 4.25 hrs./week in general education

IDEA

M.L. v. Starr
FACTS

MCPS did not include instruction on rules and customs of the Orthodox Jewish community in the IEP.

IDEA

M.L. v. Starr
FACTS

MCPS offered placement in a fundamental life skills curriculum in a comprehensive middle school.

Parents rejected that placement, and filed a due process hearing request seeking reimbursement for M.L.'s private school.

IDEA

M.L. v. Starr
FACTS

At the 5-day hearing, parents presented six witnesses: M.L.'s father; and 5 expert witnesses.

MCPS presented 3 expert witnesses.

IDEA

M.L. v. Starr
FACTS

Parents and their witnesses testified that M.L. was "not capable of generalizing what he learns at school to home and vice versa." As a result, they testified that he required instruction in school that would "prepare him for life in his Orthodox Jewish community."

IDEA

M.L. v. Starr

FACTS

20 U.S.C. § 1400(d): "The purposes of this chapter are to ensure that all children with disabilities have available to them a free appropriate public education ... designed to meet their unique needs and prepare them for ... independent living"

IDEA

M.L. v. Starr

FACTS

In short, M.L.'s parents said that the failure to prepare him for life in his Orthodox Jewish community was a failure to provide FAPE, and as a result MCPS's IEP was inappropriate.

IDEA

M.L. v. Starr

FACTS

During the hearing, 2 of parents' expert witnesses testified that the MCPS IEP would be appropriate if M.L. were not being raised as an Orthodox Jew. M.L.'s father agreed.

IDEA

M.L. v. Starr
FACTS

Parents did not prevail at the hearing. The administrative law judge found that failure to include goals/objectives expressly related to Orthodox Judaism did not make the IEP inappropriate.

IDEA

M.L. v. Starr
FACTS

The administrative law judge noted that M.L.'s parents argued that "the '"I" in "IEP"' meant that MCPS must 'provide the Student 'necessary help in accessing whatever his curriculum might be."

IDEA

M.L. v. Starr
FACTS

The administrative law judge disagreed that providing FAPE meant providing access to an individualized or specialized curriculum.

IDEA

M.L. v. Starr

FACTS

The administrative law judge concluded that an "individualized" IEP meant that "the local agency must use special education and related services that are intended to provide disabled children meaningful access to the general curriculum, despite the child's disabling conditions."

IDEA

M.L. v. Starr

FACTS

M.L.'s parents appealed to the U.S. District Court for the District of Maryland.

IDEA

M.L. v. Starr

Parents argued that the findings of fact in the administrative decision were "not regularly made," as they did not include any finding about M.L.'s inability to generalize instruction.

IDEA

M.L. v. Starr

The district court judge said the administrative law judge heard conflicting testimony about M.L.'s ability to generalize:

- parents and their witnesses argued M.L. could not generalize;
- MCPS witnesses said it was difficult.

IDEA

M.L. v. Starr

The judge determined that, because the administrative decision included a summary of this conflicting testimony and a determination that it was irrelevant to the final decision.

IDEA

M.L. v. Starr

As a result, the judge found that the findings of fact were "regularly made," and were entitled to deference at the district court level.

IDEA

M.L. v. Starr

Parents also argued that they were not requesting specialized instruction "in how to be a member of Orthodox Jewish community." Instead they argued that the IEP did not provide M.L. access to the general education curriculum while remaining a part of his Orthodox Jewish community.

IDEA

M.L. v. Starr

The judge disagreed: "the crux of this dispute: Is the education proposed in the IEP a FAPE when it does not account for the Student's individual religious and cultural needs? The short answer is yes."

IDEA

M.L. v. Starr

"the IDEA does not require an IEP to be individualized to ensure that the child can access a personalized curriculum based on that child's cultural and religious circumstances or parents' beliefs."

IDEA

Federal Court Decision

A.B. v. Baltimore City Board of School Commissioners

U.S. District Court for the District of Maryland – 2015

Three recent opinions (same case):

- *A.B. v. Baltimore City Board of School Commissioners*, Civil Action No. 14-cv-3851 (D. Md. February 4, 2015)
- *A.B. v. Baltimore City Board of School Commissioners*, Civil Action No. 14-cv-3851 (D. Md. June 9, 2015)
- *A.B. v. Baltimore City Board of School Commissioners*, Civil Action No. 14-cv-3851 (D. Md. August 13, 2015)

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

FACTS

Plaintiff A.B. was a 17-year-old girl with Down Syndrome. She completed 8th grade in a Baltimore City charter school. In spring of that year, her parents and Baltimore City Public Schools began developing an IEP for 9th grade.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

FACTS

The IEP Team recommended that A.B. be placed in a private separate day school for high school.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

Central office staff from City Schools did not attend the IEP meeting, though they were invited. When the IEP was sent to the central office for processing, City Schools staff rejected the IEP and insisted a new meeting be scheduled.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

During the second IEP development process – with the participation of school system staff – City Schools suggested removing A.B. from the diploma track.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

Eventually, City Schools agreed to continue A.B. on the diploma track, but only offered placement in a comprehensive high school setting.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

A.B.'s parents rejected that placement, and unilaterally enrolled A.B. in St. Elizabeth School.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

Parents requested mediation. As a result of mediation, City Schools agreed to fund A.B. at St. Elizabeth through the end of her 9th grade school year.

City Schools and parents then attended IEP Team meetings to develop a plan for A.B.'s 10th grade year.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

City Schools again wanted to remove A.B. from the diploma track, and proposed placement in functional life skills program at a public separate day school.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

City Schools did not identify a specific placement at the last meeting in the IEP development process.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

Instead, parents said, the decision that A.B.'s placement would be Claremont High School was made by a City Schools administrator, and not at an IEP meeting.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

Parents disagreed with placement at Claremont. Instead, they unilaterally placed A.B. at St Elizabeth for her 10th grade year, which began in July 2014, and filed a due process hearing request.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

They also filed a "motion for enforcement of procedural safeguards," asking an administrative law judge to determine that St. Elizabeth was A.B.'s "current educational placement."

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

20 U.S.C. § 1415(j) – Maintenance of Current Educational Placement:

"... during the pendency of any proceedings conducted pursuant to this section, ... the child shall remain in the then-current educational placement of the child, ... until all such proceedings have been completed."

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

The administrative law judge granted parents' motion. As a result, the administrative law judge concluded that City Schools was required to pay for St. Elizabeth as A.B.'s "stay-put" placement.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

Parents also asked the administrative law judge to order City Schools to pay A.B.'s tuition at St. Elizabeth.

The administrative law judge responded that he didn't have the power to order City Schools to pay.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

Administrative Law Judge: "I would expect that Baltimore City would not raise an issue as to paying that."

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

District Court Judge: "ALJ Burns' expectation that the BCPSS would understand its obligation to cover A.B.'s tuition at St. Elizabeth proved overly optimistic."

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

City Schools told A.B.'s parents that it would not pay St. Elizabeth.

Parents filed a motion for preliminary injunction with the U.S. District Court for the District of Maryland.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

City Schools conceded to the district court that St. Elizabeth was A.B.'s "current educational placement," but argued it was not obligated to pay for that placement.

City Schools claimed "An 'order to stay' is not an 'order to pay.'"

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

City Schools argued that the purpose of stay-put is to preserve the status quo. City Schools said that, since parents filed their request on August 7, 2014, they were entitled to preservation of status quo as of that date – namely, parental payment of St. Elizabeth tuition.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

The district court judge granted parents' motion for a preliminary injunction, ordering City Schools to pay for St. Elizabeth through the end of the 2014-2015 school year.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

The district court judge said City Schools' position was nonsensical, as it would render the interim administrative decision "meaningless."

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

District Court Judge: "If the decision was to have no effect, why would Plaintiffs have bothered to file the motion?; why would BCPSS have bothered to oppose it?; and why would the ALJ have bothered to issue his decision?"

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

City Schools appealed the grant of parents' preliminary injunction to the Fourth Circuit.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

Before that appeal was heard, however, on March 20, 2015, the administrative law judge issued his final decision, finding that City Schools' proposed placement was appropriate for A.B.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs
FACTS

As a result, City Schools filed a motion asking the district court to vacate its order requiring payment for A.B.'s placement at St. Elizabeth through the end of the school year.

City Schools also withdrew its appeal to the Fourth Circuit.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

FACTS

On April 2, 2015, City Schools' executive director of special education sent A.B.'s parents a letter, advising parents that A.B. would be assigned to Claremont and bus transportation there would begin on April 13, 2015.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

FACTS

A bus bound for Claremont arrived at A.B.'s home on April 14 and April 16.

Parents continued to send her to St. Elizabeth.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

District Court Judge: "Defendant Hoffman took these actions in what seems to be total disregard of this Court's order ... requiring BCPSS to maintain A.B.'s current educational placement ... throughout the remainder of the 2014-2015 school year."

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

FACTS

Parents appealed the final administrative decision to district court.

Parents also asked for an injunction continuing A.B.'s stay-put placement at St. Elizabeth School.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

In June 2015, the district court denied City Schools' motion to relieve it from paying for St. Elizabeth. However, the judge questioned whether stay-put "should extend throughout <u>any</u> judicial proceedings here, before the Fourth Circuit, and even through ... review by the Supreme Court."

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs

However, in August 2015, the district court judge concluded that A.B.'s stay-put placement should continue "<u>until the disagreement over her IEP is resolved</u>[.]" As a result, the judge granted parents' motion for an injunction continuing A.B.'s placement at St. Elizabeth.

IDEA

A.B. v. Baltimore City Bd. of Sch. Comm'rs FACTS

The judge allowed the case to go forward, on multiple grounds:

- Appealing from the administrative decision;
- Claiming that City Schools denied FAPE by violating the initial stay-put injunction in April 2015; and
- Claiming that City Schools discriminated against A.B., in violation of Section 504 and the ADA.

The case is still pending before the court.

IDEA

Stay-Put Placement

The court in *A.B.* based its decision – to grant an ongoing stay-put injunction – in part on a recent decision by the U.S. Court of Appeals for the Third Circuit: *M.R. v. Ridley Sch. Dist.* (2014).

IDEA

Stay-Put Placement

In *M.R.*, the Third Circuit also considered the question of whether stay-put would apply throughout appellate proceedings, up to the U.S. Supreme Court.

IDEA

Stay-Put Placement

The court concluded that "the statutory language and the 'protective purposes' of the stay-put provision lead to the conclusion that Congress intended stay-put placement to remain in effect through the final resolution of the dispute."

744 F.3d 112, 125

IDEA

Stay-Put Placement

The Ridley School District filed a writ of *certiorari* with the U.S. Supreme court, seeking a review of that conclusion.

IDEA

Stay-Put Placement

The Supreme Court ultimately rejected the school system's request for review. However, before that happened, the Court invited the Office of the Solicitor General to offer the view of the federal government on the question.

IDEA

Stay-Put Placement

The Solicitor General filed a brief, noting that the federal government agrees with the Third Circuit – stay-put applies through all levels of IDEA disputes, from the administrative level up through the U.S. Supreme Court.

IDEA

Stay-Put Placement

Because the Supreme Court did not review the case, though, the issue may still be the subject of future litigation in other circuit courts of appeal.

IDEA

Federal Court Decision

Doe v. Board of Education of Washington County

U.S. District Court for the District of Maryland, Civil Action No. 15-cv-00074, August 6, 2015

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

Plaintiff J.D. was an 8th grade student enrolled in Hicks Middle School. He and his family moved into the county at the beginning of the 2011-2012 school year.

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

J.D. received special education services under the disability code of Intellectual Disability. His IEP called for J.D. to be outside of the general education setting for his entire school week, except for gym class and lunch.

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

Parents reported to the school that – only a few weeks into the school year – several students had started bullying J.D.

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

Bullies taunted and assaulted him in gym class. A nondisabled student hit J.D. on the head in gym because J.D. was "a special needs student."

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

Other students realized that J.D. was willing "to do things" if they asked him. Some bullying occurred when he was convinced to engage in unsafe or unwise behavior, "based on his comprehension issues and desire to be accepted."

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

Most of the bullying took place in the hallways, as J.D. transitioned between classes.

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

In response, the assistant principal agreed to let J.D. leave classes early, and to let him eat lunch in the office, rather than in the chaotic cafeteria.

J.D. ate lunch in the assistant principal's office from November to January

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

In January 2012 – without any notice to his parents – J.D. started eating lunch in the cafeteria again.

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

At the end of that month, a group of students convinced J.D. to provoke a classmate who was known to be violent.

IDEA

Doe v. Bd. of Educ. of Washington Co.

FACTS

That student violently attacked J.D., who fell to the ground. The other student continued attacking, kicking J.D. in the head while wearing steel-toed boots. Eventually, another student intervened to stop the attack.

IDEA

Doe v. Bd. of Educ. of Washington Co.

FACTS

J.D. was taken to a hospital. He was diagnosed with a concussion, facial lacerations, a fractured orbital socket and, ultimately, a traumatic brain injury.

IDEA

Doe v. Bd. of Educ. of Washington Co.

FACTS

J.D.'s parents sued the Board of Education, in its official capacity, and the assistant principal, in his individual capacity (that is, as a private individual, not as a school official).

IDEA

Doe v. Bd. of Educ. of Washington Co.
FACTS

Parents' claims were based on violations of the Americans with Disabilities Act, Section 504, negligence and gross negligence.

IDEA

Doe v. Bd. of Educ. of Washington Co.

The assistant principal moved to have all claims against him dismissed. In most cases, government employees cannot be individually liable for actions that occur as part of their employment.

IDEA

Doe v. Bd. of Educ. of Washington Co.

The district court judge dismissed the claims against the principal for violations of the ADA and Section 504. Plaintiffs cannot successfully bring such claims against private individuals in their individual capacities, only against government entities.

IDEA

Doe v. Bd. of Educ. of Washington Co.

The judge noted that the assistant principal could be liable for gross negligence. However, the judge noted that it's very difficult to demonstrate gross negligence.

IDEA

Doe v. Bd. of Educ. of Washington Co.

The judge noted previous federal court deicsions, which have defined gross negligence as "wanton and reckless disregard for others," and behavior "so utterly indifferent to the rights of others that he acts as if such rights do not exist."

IDEA

Doe v. Bd. of Educ. of Washington Co.

Parents pointed to the assistant principal's failure to keep J.D. from eating in the cafeteria as of January 2012, and his failure to notify parents that J.D. had started eating in the cafeteria again.

IDEA

Doe v. Bd. of Educ. of Washington Co.

The judge said that was not enough to show that the assistant principal was "wanton," "reckless" or "utterly indifferent" to J.D.'s rights.

IDEA

Doe v. Bd. of Educ. of Washington Co.

The judge also determined that a claim against the assistant principal for simple negligence was precluded by federal law (20 U.S.C. §6736, the Paul D. Coverdell Teacher Protection Act of 2001).

IDEA

Doe v. Bd. of Educ. of Washington Co.

The Board of Education moved to dismiss the claims for ADA and 504 violations, and for gross negligence.

IDEA

Doe v. Bd. of Educ. of Washington Co.

The judge dismissed the gross negligence claim against the Board of Education, for the same reasons already noted – the conduct of the assistant principal was not sufficiently "wanton," "reckless" or "utterly indifferent."

IDEA

Doe v. Bd. of Educ. of Washington Co.

The Board argued that the claims for ADA and 504 violations were really IDEA claims, and as a result, parents should have exhausted their administrative remedies – through a due process hearing.

IDEA

Doe v. Bd. of Educ. of Washington Co.

The judge rejected that argument. Personal injury claims are not available under the IDEA. "Plaintiffs are seeking compensation for personal injuries, not an educational injury."

IDEA

Bullying

While the District Court considered a bullying case that was <u>not</u> related to J.D.'s IEP, there is guidance from both the federal government and from other courts that bullying <u>can</u> result in an educational injury that should be addressed in a student's IEP.

IDEA

OSERS "Dear Colleague" Letter

August 20, 2013

"Whether or not the bullying is related to the student's disability, any bullying of a student with a disability that results in the student not receiving meaningful educational benefit **constitutes a denial of FAPE that must be remedied.**"

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary

IDEA

OSERS "Dear Colleague" Letter

August 20, 2013

"The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit . . .".

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary

IDEA

OSERS "Dear Colleague" Letter

August 20, 2013

". . . bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA that must be remedied."

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary

IDEA

OSERS "Dear Colleague" Letter

August 20, 2013

"Students who are targets of bullying behavior are more likely to experience lower academic achievement and aspirations, higher truancy rates, feelings of alienation from school, poor relationships with peers, loneliness, or depression."

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary

IDEA

OSERS "Dear Colleague" Letter

August 20, 2013

"Students with disabilities are disproportionately affected by bullying. For example, students with learning disabilities, attention deficit or hyperactivity disorder, and autism are more likely to be bullied than their peers."

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary

IDEA

OCR "Dear Colleague" Letter

October 26, 2010

"... some student conduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the [U.S. Department of Education's] Office for Civil Rights (OCR)."

Author: Russlynn Ali, Assistant Secretary for Civil Rights SECTION 504 and ADA

OCR "Dear Colleague" Letter

October 26, 2010

"School districts may violate these civil rights statutes and the Department's implementing regulations when peer harassment based on ... disability is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees."

Author: Russlynn Ali, Assistant Secretary for Civil Rights SECTION 504 and ADA

OCR "Dear Colleague" Letter

October 26, 2010

"Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services or opportunities offered by a school."

Author: Russlynn Ali, Assistant Secretary for Civil Rights SECTION 504 and ADA

OCR "Dear Colleague" Letter

October 26, 2010

"A school is responsible for addressing harassment incidents about which it knows **or reasonably should have known.**"

Author: Russlynn Ali, Assistant Secretary for Civil Rights

SECTION 504 and ADA

Maryland Bullying Laws

All public school systems and all non-public schools in Maryland are required to have in place a policy prohibiting bullying, harassment or intimidation.

Maryland Code, Education Article, §§ 7-424.1(c) & 7-424.3(b)

Maryland Bullying Laws

What is bullying?

"Bullying, harassment, or intimidation" means intentional ... verbal, physical, or written conduct, or an intentional electronic communication. Electronic communication includes communication transmitted by any electronic device, including a cell phone, computer or pager.

Maryland Bullying Laws

Conduct is bullying if it creates a hostile educational environment by substantially interfering with a student's educational benefits, opportunities, or performance, or with a student's physical or psychological well-being.

Maryland Bullying Laws

Bullying conduct also must be:

- Motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, familial status, or physical or mental ability or disability; or
- Threatening or seriously intimidating.

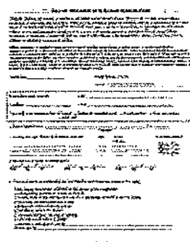
Maryland Bullying Laws

Within the context of schools, bullying is conduct, described above, that:

- Occurs on school property, at a school activity or event, or on a school bus; or
- Substantially disrupts the orderly operation of a school.

Maryland Bullying Laws

MSDE has created a standard report form for any victim of bullying, harassment, or intimidation, and requires county boards to report any incidents in their schools.



Maryland Bullying Laws

School systems must distribute copies of the report form to each public school under the county board's jurisdiction.

The information in a report form:

- Is confidential and generally may not be disclosed; and
- May not be made a part of a student's permanent educational record

Maryland Bullying Laws

A bullying incident can be reported by:

- A student;
- The parent, guardian, or close adult relative of a student; or
- A school staff member.

Maryland Bullying Laws

According to MSDE, there were more than 4,500 bullying incidents reported last year.

MSDE acknowledged that more incidents probably go unreported.

Maryland Bullying Laws

We recommend, at any school, that parents, staff and students should know:

- Who should receive a report and be provided with the state form;
- The timeline for receiving a response; and
- Who to turn to if they're not satisfied with that response.

Maryland Bullying Laws

In 2013, the Maryland General Assembly unanimously passed "Grace's Law", named after Grace McComas, a 15-year-old high school student who committed suicide after being harassed on social media sites.

Maryland Code, Criminal Law Article, §3-805.

Maryland Bullying Laws

Grace's Law criminalizes the malicious use of electronic communication. A violation of Grace's Law is a misdemeanor criminal offense punishable by up to one year of imprisonment, a fine not to exceed $500.00, or both.

Maryland Bullying Laws

Extreme cases of bullying may be prosecuted under Maryland's harassment law, which prohibits "following another in or about a public place or maliciously engage[ing] in a course of conduct"

Maryland Code, Criminal Law Article, § 3-803

Maryland Bullying Laws

Extreme cases of bullying may also be prosecuted under Maryland's stalking law, which prohibits "a malicious course of conduct ... where the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear ... of serious bodily injury; ... of an assault in any degree; ... or ... of death."

Maryland Code, Criminal Law Article, § 3-802

Federal Court Decision on Bullying as a Denial of FAPE

T.K. v New York City Dep't of Educ.

U.S. District Court for the Eastern District of New York, 32 F.Supp.3d 405, 2014

IDEA

T.K. v New York City Dep't of Educ.

FACTS

Plaintiff L.K. was a 12-year-old girl with a learning disability (she was previously identified as autistic). In the 2007-2008 school year, she was placed in a classroom with students with learning disabilities and non-disabled peers.

IDEA

T.K. v New York City Dep't of Educ.

FACTS

Many staff members at her school reported that L.K. was almost constantly bullied by other students.

IDEA

T.K. v New York City Dep't of Educ.

FACTS

L.K.'s one-to-one aides reported that there was "constant negative interaction" between L.K. and other students. The other children would sometimes trip her in the hallway or physically push her for fun; many times other students would refuse to touch items because L.K. had touched them.

IDEA

T.K. v New York City Dep't of Educ.

FACTS

One of L.K.'s aides said she had tried to bring the bullying to the attention of classroom teachers, but was ignored.

The school never produced any written reports of bullying. L.K.'s parents wrote letters to the school about specific bullying incidents, and went with L.K. to talk to the principal.

IDEA

T.K. v New York City Dep't of Educ.

FACTS

The parents tried to raise the issue of bullying at an IEP meeting. They were told it was not the appropriate time to discuss bullying.

IDEA

T.K. v New York City Dep't of Educ.
FACTS

L.K.'s parents sought relief at a due process hearing. They said the extent of bullying made L.K. emotionally unavailable for instruction – the girl was taunted, pushed and ostracized so much that she spent her time at school upset about what she'd suffered and anxious about what might happen next.

IDEA

T.K. v New York City Dep't of Educ.
FACTS

They said that, as a result, L.K. was unable to make educational progress and the school had denied her a free appropriate public education.

IDEA

T.K. v New York City Dep't of Educ.
FACTS

Ultimately, the hearing officer found that L.K. had made progress in spite of the bullying, and therefore the school system had not denied a FAPE to L.K.

In 2011, L.K.'s parents appealed to the U.S. District Court for the Eastern District of New York state.

IDEA

T.K. v New York City Dep't of Educ.

The district court judge found that "When a school fails to take reasonable steps to prevent objectionable harassment of a student, it has denied her an educational benefit protected by statute."

IDEA

T.K. v New York City Dep't of Educ.

The judge examined scientific and social science literature examining the root causes and effects of bullying, and showing that "students with a disability ... are subject to increased bullying that is often directed at the disability."

IDEA

T.K. v New York City Dep't of Educ.

Research indicates, the judge noted, that students with disabilities are frequently less popular; have fewer friends; and struggle more with loneliness and peer rejection. As a result they are more vulnerable to bullying.

IDEA

T.K. v New York City Dep't of Educ.

As a result, the judge found that bullying could affect the availability of FAPE to a student with a disability.

IDEA

T.K. v New York City Dep't of Educ.

The student does not have to show that bullying completely prevented her from receiving FAPE – only that it would affect the opportunity to receive FAPE.

IDEA

T.K. v New York City Dep't of Educ.

The judge remanded the case back to the administrative level, to determine whether there had been a loss of opportunity to receive FAPE or a denial of FAPE in light of his ruling.

IDEA

T.K. v New York City Dep't of Educ.

On remand, the hearing officer applied the new bullying test, and found that:

1)L.K. was a victim of bullying;

2)School administrators knew or should have known L.K. was being bullied;

3)Staff failed to take appropriate steps to address or investigate the bullying; but

4)That L.K. had still made progress, and therefore the bullying had not resulted in a denial of FAPE.

IDEA

T.K. v New York City Dep't of Educ.

Parents and the school system appealed to a state review officer. The state review officer:

- Upheld the decision that L.K. had not been denied FAPE as the result of bullying; and
- Overturned the hearing officer's finding that the school had been indifferent to the bullying.

IDEA

T.K. v New York City Dep't of Educ.

Parents appealed to the U.S. District Court for the Eastern District of New York. The judge overturned the administrative decisions, and found their conclusions – that L.K. was not denied FAPE due to bullying – was "not supportable."

IDEA

T.K. v New York City Dep't of Educ.

The judge – who had heard the earlier appeal in 2011 – found that the effects of bullying were sufficiently clear. He ruled that the school system must reimburse parents for a unilateral private placement.

IDEA

T.K. v New York City Dep't of Educ.

The New York City Department of Education has appealed the district court decision to the U.S. Court of Appeals for the Second Circuit. That appeal is still pending.

IDEA

T.K. v New York City Dep't of Educ.

The U.S. Department of Justice filed an *amicus curiae* brief – a "friend of the court" brief – that supports the conclusion that bullying can result in a denial of FAPE. The Justice Department urged the Second Circuit to uphold the district court decision.

IDEA

School Discipline

In 2014, the Maryland State Board of Education adopted revised regulations dealing with how all students – with or without disabilities – are disciplined.

The revisions affected COMAR 13A.08.01.11, 13A.08.01.12, 13A.08.01.15, and 13A.08.01.21.

IDEA

School Discipline

The new regulations require that local school boards adopt discipline policies "based on the goals of fostering, teaching, and acknowledging positive behavior."

IDEA

School Discipline

Generally, the revised regulations were intended to ensure that discipline was not imposed at the cost of educational opportunity and progress, while maintaining safe schools and allowing for discretion in imposing discipline.

IDEA

School Discipline

The new regulations also require school systems to determine whether the discipline process affects minority students at a disproportionate rate and whether it has a discrepant impact on special education students.

IDEA

School Discipline

In addition, guidelines from MSDE on implementing the new regulations recommend addressing many behaviors by referring a student to an IEP or 504 team meeting, to determine whether additional supports are necessary – regardless of whether the student has previously been found eligible.

IDEA

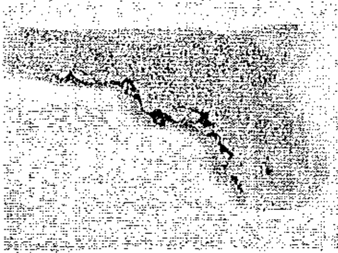
Maryland Board of Education Opinion

B.J. and Kimberly W. v. Anne Arundel County Board of Education

Maryland State Board of Education, Opinion No. 15-08, February 24, 2015

B.J. and Kimberly W.

The state Board of Education considered appropriate school discipline in its decision on the Pop-Tart Gun.



B.J. and Kimberly W.

The student, J.W., was 7 years old when he started attending 2nd grade at his local elementary school in November 2012.

B.J. and Kimberly W.

Very soon, J.W. began displaying problem behaviors. His school tried various strategies to address behavior:

- extra breaks,
- a reward system,
- yoga and stress balls,
- reducing distractions.

Behaviors continued.

B.J. and Kimberly W.

Parents were notified about J.W.'s behaviors through phone calls, conferences with his teacher, and notes sent home.

B.J. and Kimberly W.

In early December 2012, the school began collecting data to conduct a functional behavior assessment. That behavior log included information through the end of the school year.

B.J. and Kimberly W.

Over the next three months, J.W.'s behaviors included:

- Crawling under his desk
- Yelling at other students
- Refusing to complete work
- Running out of his classroom
- Rocking the furniture so that it banged into other desks
- Crawling under lunch table, then reaching across and smashing milk containers
- Trying to "box like a fighter"
- Growling, chewing on chairs and trying to touch another student

B.J. and Kimberly W.

More behaviors:

- Yelling in class then picking up his chair to throw it
- Punching another student in the nose because that student ignored him.
- Threatening to punch another student
- Banging his head on his desk until he was sent to the nurse to ensure that he had not injured himself
- Crawling on the floor in the hall during instructional time
- Repeatedly pretending to punch another student, then throwing his chair
- Chasing students around the classroom trying to steal their breakfast

B.J. and Kimberly W.

More behaviors:

- Pretending to punch multiple students, then punching his own head multiple times
- Yelling and arguing with other students during language arts
- Pretending to shoot other students during after-school homework club
- Crawling on the floor at after-school homework club to "get" a female student who said he was "creeping her out," then saying he was getting his revenge on her

B.J. and Kimberly W.

On February 28, 2013, J.W. chewed his Pop Tart into a gun shape, then said to his classmates "Look, I made a gun" while holding it over his head. Later that day, his teacher held a conference with J.W.'s mother and said that was inappropriate behavior.

B.J. and Kimberly W.

The next day, J.W. again chewed his Pop Tart into the shape of a gun. As other students were working on a journal writing assignment, J.W. stood up and pretended to shoot them while making gun noises.

B.J. and Kimberly W.

J.W. then ran into the hallway, pointed his Pop Tart gun into another classroom, and pretended to shoot them while making noise.

B.J. and Kimberly W.

He ignored teacher requests to stop. J.W.'s teacher called the office and had him removed from class, then wrote a discipline referral.

B.J. and Kimberly W.

The assistant principal spoke with the student, then consulted with the principal. They reviewed the student's history of problem behaviors, and different strategies that were attempted to address these behaviors.

B.J. and Kimberly W.

The principal decided that J.W. should be suspended for 2 days: 1 out-of-school suspension, and 1 in-school suspension. The principal wrote to parents that the decision was based on "ongoing classroom disruptions."

B.J. and Kimberly W.

Parents challenged the suspension. They characterized the school as suspending J.W. for a single event.

B.J. and Kimberly W.

Anne Arundel County's superintendent's designee upheld the suspension, and found it was clearly the result of "an ongoing series of substantial incidents over a three-month period that disrupted class and scheduled activities, and resulted in students being moved from the classroom on several occasions."

B.J. and Kimberly W.

J.W.'s parents appealed the decision by the superintendent's designee to the Anne Arundel County Board of Education. The Board appointed an independent hearing officer to investigate, who considered records and heard testimony.

B.J. and Kimberly W.

The hearing officer recommended upholding the suspension.

The Anne Arundel County Board of Education reviewed the hearing officer's report, heard oral argument from parents and the superintendent in an open Board meeting, and then upheld the suspension.

B.J. and Kimberly W.

Parents appealed that decision to the Maryland State Board of Education.

Parents argued that the suspension was not justified because no "classroom disruption" occurred. As evidence, they noted that the discipline referral did not say there was a classroom disruption

B.J. and Kimberly W.

However, school staff testified that was not intended as the final word on the issue. The State Board said the student's behavior did constitute a classroom disruption.

B.J. and Kimberly W.

Parents also objected that a suspension for a 7-year-old is not good educational policy. The state board said that was not the basis for overturning a suspension if there were no alleged violations of state or local law, policies or procedures.

B.J. and Kimberly W.

J.W.'s suspension occurred before the State Board adopted new discipline regulations, and before Anne Arundel County's Board of Education adopted a new discipline policy in response.

B.J. and Kimberly W.

However, even under the revised regulations, it's likely that J.W.'s suspension would be upheld as a valid response to a "classroom disruption," or to a 3-month long series of behaviors.

OSERS "Dear Colleague" Letter

November 16, 2015

An IEP "must be aligned with State academic content standards for the grade in which the child is enrolled."

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary

IDEA

OSERS "Dear Colleague" Letter
November 16, 2015

IEP teams "must consider how a child's specific disability impacts his or her ability to advance appropriately toward attaining ... Annual goals aligned with applicable State content standards during the period covered by the IEP."

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary   IDEA

OSERS "Dear Colleague" Letter
November 16, 2015

For a child "significantly below" grade level, the team "should determine annual goals that are ambitious but achieveable .... the annual goals need not necessarily result in the child's reaching grade level within the year ... but ... should be sufficiently ambitious to help close the gap."

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary   IDEA

OSERS "Dear Colleague" Letter
November 16, 2015

- However, states may develop "alternate academic achievement standards for children with the most significant cognitive disabilities."
- Only "a very small number of children" have the "most significant" cognitive disabilities.

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary   IDEA

OSERS "Dear Colleague" Letter

November 16, 2015

EXAMPLE: "After reviewing recent evaluation data for a 6th grade child with a specific learning disability, the IEP Team determines that the child is reading 4 grade levels below his current grade; however, his listening comprehension is on grade level.

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary IDEA

OSERS "Dear Colleague" Letter

November 16, 2015

EXAMPLE: The child's general education teacher and special education teacher also note that when materials are read aloud to the child he is able to understand grade-level content. The IEP Team determines he should receive specialized instruction to improve his reading fluency.

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary IDEA

OSERS "Dear Colleague" Letter

November 16, 2015

EXAMPLE: Based on the child's rate of growth during the previous school year, the IEP Team estimates that with appropriate specialized instruction the child could achieve an increase of at least 1.5 grade levels in reading fluency.

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary IDEA

OSERS "Dear Colleague" Letter

November 16, 2015

EXAMPLE: To ensure access to 6th grade content standards (e.g., science, history) the IEP Team determines modifications for all grade-level reading assignments.

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary

IDEA

OSERS "Dear Colleague" Letter

November 16, 2015

EXAMPLE: His reading assignments would be based on sixth grade content but would be shortened to assist with reading fatigue resulting from his disability. In addition, he would be provided with audio text books and electronic versions of longer reading assignments that he can access through synthetic speech.

Authors: Melody Musgrove, Ed. D., Director, Office of Special Education Programs; Michael K. Yudin, Acting Assistant Secretary

IDEA

OSERS "Dear Colleague" Letter

November 16, 2015

EXAMPLE: With this specialized instruction and these support services, the IEP would be designed to enable the child to be involved and make progress in the general education curriculum based on the State's sixth grade content standards, while still addressing the child's needs based on the child's present levels of performance."

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IDEA

OSERS "Dear Colleague" Letter

This "Dear Colleague" letter does not clarify the degree to which a student's IEP must "align" with grade-level academic content standards.

The IDEA also does not provide any guidance about how closely the IEP goals and grade-level curriculum must "align."

IDEA

OSERS "Dear Colleague" Letter

Webster's definition of "align":

- to arrange things so that they form a line or are in proper position
- to change (something) so that it agrees with or matches something else
- to join a group that is supporting or opposing something

IDEA

2015 Developments in Education Law

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