EIGHTH CIRCUIT AND MISSOURI COURT DECISIONS UNDER IDEA

MISSOURI DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
IDEA ADMINISTRATIVE LAW JUDGE TRAINING
THURSDAY, SEPTEMBER 19, 2019

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I. INTRODUCTION

The purpose of this presentation is to review the various legal cases in special education published in the last two years or so in the Eighth Circuit and the federal district courts of Missouri.

II. CASES

B.S. v. Anoka Hennepin Pub. Sch., 799 F.3d 1217, 66 IDELR 61 (8th Cir. 2015). Hearing officers may limit the number of days for the hearing, provided that the parties are afforded a meaningful opportunity to exercise their hearing rights. Here, the ALJ limited each party's time for the presentation of their case to nine (9) hours. This was done after the ALJ consulted the parties regarding the issues to be decided during the prehearing conference. In affirming the federal district court that had found in favor of the school district, the Eighth Circuit noted that the ALJ had not abused "its considerable discretion in fulfilling the statutory mandate to oversee the due process hearing" and that he had "balanced the due process rights of the parties with the need for administrative efficiency and limited public resources."

I.Z.M. v. Rosemount-Apple Valley-Eagan Pub. Sch., 863 F.3d 966, 70 IDELR 86 (8th Cir. 2017). The parents of a student with a visual impairment could not convince the Eighth Circuit that the IDEA's regulation at 34 C.F.R. § 300.172 governing access to instructional materials created a "strict compliance" standard that would make the school district liable for even a single implementation failure. The Circuit observed that the school district must "take all reasonable" steps in light of the student's circumstances to provide accessible instructional materials (e.g., Braille) but that the IDEA did not guarantee "perfect results."

[‡] The author acknowledges with appreciation source material provided by Mark C. Weber, Esq.

Parrish v. Bentonville Sch. Dist., 896 F.3d 889, 894, 72 IDELR 141 (8th Cir. 2018). In several consolidated cases concerning children with severe behavioral difficulties, challenging, among other things, the school district's use of restraint, the Court affirmed determinations of the federal district court and the due process hearing officer that "(1) the District took reasonable steps to train its teachers; (2) the District did not use physical force and seclusion in a way that denied Child L or Child A a FAPE; (3) the District held programming conferences and informal meetings to propose, implement, modify, and communicate interventions regarding misbehavior and academic progress as well as goals and objectives; (4) the District's implementation and collection of data arising from behavior intervention plans complied with the IDEA; (5) the strategies used by the District, even if not perfect, complied with the IDEA; (6) the parents did not raise a genuine issue for trial on whether the District failed to educate their children in the least restrictive environment; and (7) after fully developing the record on whether the parents of Child L were given a meaningful opportunity to participate in the modification of Child L's IEP and behavior plans, there was no actionable IDEA violation raised by either Child L or Child A."

Doe v. Pleasant Valley Sch. Dist., 745 F. App'x 658, 73 IDELR 171 (8th Cir. 2018) (unpublished). In upholding the federal district court, the Court held that the parents failed to demonstrate that the school district discriminated against the student under the Rehabilitation Act and the ADA by offering what the parent's perceived as an inadequate IEP because the IEP did not incorporate all of the recommendations included in an IEE. In affirming the federal district court, the Court explained that, for the parents to prevail under the Rehabilitation Act and the ADA, they must allege more than simply a denial of FAPE. Rather, the parents must prove intentional discrimination in the form of bad faith or gross misjudgment.

Paris Sch. Dist. v. Harter, 894 F.3d 885, 72 IDELR 112 (8th Cir. 2018). In examining parent's attorney's fee claims, the Court agreed with the federal district court that the initial fee claim should be reduced by more than half (from $69, 206.74 to $27,000) because the attorney had "billed for unnecessary and excessive work." In affirming the reduction, the Court credited the federal district court's "knowledge, experience, and expertise of the time required to complete similar activities, and its familiarity with the case at hand." The Court also agreed with the lower court that the attorney's second fee claim was untimely because the attorney failed to file the fee claim by court ordered deadline.

Smith v. Rockwood R-VI Sch. Dist., 895 F.3d 566, 72 IDELR 111 (8th Cir. 2018). The Court affirmed the federal district court who had dismissed the parent's discrimination claim under the Rehabilitation Act because of the parent's failure to exhaust administrative remedies. Specifically, the parent had filed a due process complaint because the school district suspended the student for 180 days despite the IEP team concluding that the student had been suspended for conduct that manifested from his disability. The due process complaint was resolved without the need for a due process hearing. However, the

parent filed the discrimination claim in federal district court, claiming that the student "was excluded from and deprived of educational benefits and … was excluded from participating in, and was denied the benefits of, the program of education" in the public school. Nonetheless, although the parent alleged disability discrimination, the Court agreed with the federal district court that the "gravamen of the complaint is the denial of a public education," requiring exhaustion of the IDEA even when, as here, the parent was seeking money damages, which are not authorized by the IDEA.

Nelson v. Charles City Community Sch. Dist., 900 F.3d 587, 72 IDELR 202 (8th Cir. 2018). In applying the two hypotheticals in *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743 (2017) – could the student assert the same claim against a public entity other than a school, such as a library? Or could an adult at the school assert the same claim against the district? – the Court affirmed the lower court's decision dismissing the parent's Rehabilitation Act lawsuit for failure to first exhaust the IDEA. Here, the parents of a student with polycystic ovarian syndrome and depression, which caused frequent absences from school, sought to have the student enrolled in an online program outside of the student's school district of residence. Because of an untimely application, the student was not allowed to enroll in the program unless the superintendent from the student's school district of residence recommended approval, which he did not. The parents appealed to the State Board (who found in their favor) but never pursued a due process claim under the IDEA. Post the favorable State Board determination, the parents filed their Rehabilitation Act claim in federal district court, which was ultimately dismissed. The Court noted that, although the State Board had granted the student leave to enroll in the online program, the parents could not "forego the administrative process and seek later to recover damages to compensate for their own self-help remedies."

Barnwell v. Watson, 880 F.3d 998, 71 IDELR 122 (8th Cir. 2018). A school district will not be held liable for disability-based harassment under the Rehabilitation Act simply because the parents raised general concerns about the possibility of bullying. Here, the parent informed the IEP team in two meetings that she was worried that the student, who was diagnosed with Asperger Syndrome, would be bullied because of his past difficulties with peers. (The student ultimately committed suicide and had a history of incidents outside school that were never shared with the school district.) The parent, however, did not offer any specific incidents of harassment or identify any students who had bullied the student. The parent's general concerns were not sufficient to put the school district on notice of disability-based harassment and the Court affirmed the federal district court's dismissal of the claim.

D.L. v. St. Louis City Pub. Sch. Dist., 326 F. Supp. 3d 810, 72 IDELR 157 (E.D. Mo. 2018). Here, the student had a history defiant and inappropriate behaviors, poor social skills, suicidal ideation. He was ultimately diagnosed with an ASD and the private evaluator recommended an autism-based educational program. The IEP team, however, recommended a program in the public schools

for children with behavioral and emotional disturbances. The public school program, when recommended, however, did not have the expertise to work with children with ASD and was not equipped to address sensory needs. The parents, therefore, removed the student from the public schools and enrolled him in a private school and sought tuition reimbursement. The parents lost at the due process hearing, in part, because the hearing officer found that the student did not meet the IDEA definition of autism and it was felt that the student was not benefitting from the sensory diet in the private school. The parents appealed and the federal district court reversed the hearing officer. The federal district court affirmed the long-standing view that the adequacy of an IEP is judged by the student's specific needs and not the educational disability category. However, the federal district court also found that the IEP/placement failed to adequately address the student's sensory needs. With respect to the private placement, the court found that it met the student's educational needs. (The court noted that the hearing officer did not make a determination as to the appropriateness of the private placement. Rather, the court also noted, the hearing officer "considered evidence on [student's] progress at [private school] primarily to evaluate whether an autism-focused educational environment was necessary.")

E.D. v. Palmyra R-I Sch. Dist., 911 F.3d 938, 73 IDELR 137 (8th Cir. 2019). Parents cannot "bypass" IDEA's exhaustion requirements by refusing IDEA services altogether. When the relief sought is available under the IDEA, parents must first exhaust IDEA's administrative procedures before suing in court, regardless of whether the parents previously sought or accepted IDEA services. Here, the parents sought educational accommodations (i.e., use of an iPad) through a Section 504 Plan for their son with Down Syndrome but rejected any instruction in specialized classes. The school district offered IDEA services, which were rejected by the parents. Subsequently, the student was removed from the school district and the parents sued in federal district court claiming that the school district had violated the Rehabilitation Act. The federal district court granted summary judgement in favor of the school district and the Eighth Circuit affirmed, holding that the relief the parents sought was available under the IDEA mandating exhaustion. In doing so, the Court distinguished *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743 (2017), stating that exhaustion hinges on whether a lawsuit seeks relief for a denial of a free appropriate public education. If it does, then the parents must first exhaust under IDEA. Only those claims that seek relief for simple discrimination that are tangentially related to education because the discriminatory acts just happened to take place in school do not first require exhaustion under the IDEA.

Independent Sch. Dist. No. 283 v. E.M.D.H., 357 F. Supp. 3d 876, 74 IDELR 19 (8th Cir. 2019). In this case, a student with diagnoses including generalized anxiety disorder, school phobia, unspecified obsessive-compulsive disorder or autism spectrum disorder, panic disorder with agoraphobia, ADHD-primarily inattentive type, and severe recurrent major depressive disorder, was frequently absent from school but generally performed well academically. In eighth grade, however, she stopped attending altogether and was admitted to a

day treatment program. The public school entered incompletes for her grades, did not refer her for special education, and disenrolled her. In ninth grade, the school district reenrolled her, but disenrolled her again when she was readmitted to a day treatment program. Then, when the student was in tenth grade, the school district provided her a Section 504 plan but eventually disenrolled her twice again for absences. After a second admission to an inpatient program, the student's parents requested a special education evaluation for her, and the student was reenrolled for eleventh grade. The school district conducted the evaluation, and before completing the evaluation, the school district offered an alternative learning environment and online program, but the student attended only two days of the program. Once the evaluation was complete, the school district found the student not eligible under the autism, emotional disturbance or other health impairment categories. The parents obtained an independent neuropsychological exam and a partial functional behavioral assessment and filed a due process hearing request. The Court affirmed an ALJ decision in favor of the parents but modified the remedy. In upholding the parents' claim the Court reasoned that the school district evaluations were deficient under state law due to the lack of any systematic classroom observation or functional behavioral assessment, and that the student met the emotional disturbance and other health impairment definitions. The Court noted that the mental health problems caused absenteeism that inhibited progress in the general curriculum, even though the student performed well when attending school. The Court also affirmed that the district failed its child-find duties when it was aware no later than spring of 2015 that student had stopped attending school because of anxiety, and that limitations did not apply because the school district failed to provide notice of procedural safeguards until June 2017. The Court awarded reimbursement for the independent evaluations the parents obtained and for privately provided educational services but reversed the ALJ's award of payment for private compensatory services, reasoning that the school district itself might be able to provide the services.

Albright v. Mountain Home Sch. Dist., 926 F.3d 942, 74 IDELR 187 (8th Cir. 2019). This case involved a young student with autism and intellectual deficits whose parent challenged the educational program proposed by the school district. The Court affirmed determinations below that the IEP conformed to the requirement of providing free, appropriate public education as articulated in *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988 (2017). The Court stressed the evidence that the child's behavior plan was working and that the school district extensively used peer-reviewed practices. The sensory integration techniques employed by the school district were recommended by an occupational therapist. The Court also noted that the student's test scores, when considered in context, demonstrated academic improvement. The Court also affirmed that the parent was not denied the opportunity to participate in the IEP process. It pointed out that the parent attended all the IEP conferences she chose to attend. There was no evidence that IEP conferences were held without her. Moreover, various emails and IEP meeting transcripts demonstrated that the parent participated. The Court declared that any technical violation of the IDEA

notice requirements did not affect the student's IEPs or deprive her of an educational benefit. An issue existed about other school years, but the Court held that the settlement of IDEA due process proceedings as to those school years meant that claims under other statutes for the same periods were not exhausted; futility might be a basis to excuse exhaustion, but a futility argument was not raised in the federal district court. The Court also affirmed summary judgment against the parent on a retaliation claim, saying that it lacked factual support.