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Year in Review: The Recent Special Education Decisions Affecting Minnesota Schools

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NOTE: The purpose of this presentation, and the accompanying materials, is to inform you of interesting and important legal developments. While current as of the date of presentation, the information given today may be superseded by court decisions and legislative amendments. We cannot render legal advice without an awareness and analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the presentation or addressed in this outline, you should consult your legal counsel. ©2024 Ratwik, Roszak & Maloney, P.A.

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Cases Before the Eighth Circuit Court of Appeals

<i>Baker v. Bentonville Sch. Dist.</i> , 75 F.4th 810 (8th Cir. 2023)

Background Information:

I.B., a minor with vision problems since birth, began kindergarten at Cooper Elementary school in 2017. Prior to starting kindergarten, I.B.’s parent and the school met to develop and implement a Section 504 plan. The plan consisted of providing I.B. with large print materials, close teacher supervision during classroom transitions and activities, a “buddy” for errands and bathroom breaks, and specialized transportation. During the first couple months of kindergarten, I.B. suffered four minor injuries while at school and a fifth injury on the playground in which another student kicked her in the face. After these injuries, and at the parent’s request, the school updated I.B.’s 504 plan to include increased supervision at recess and during P.E. class. I.B. was subsequently injured for a sixth time a few days later and the school and parent met to revise the 504 plan again.

I.B. shortly thereafter developed a seizure disorder which her parents attributed to the injuries she sustained at school. I.B., through her parents, brought suit against the District alleging claims of disability discrimination in violation of Section 504 and negligence.

Issues:

The district court granted summary judgment in favor of the District and dismissed all claims. In dismissing the claims, the district court found there was no evidence of bad faith or gross misjudgment on the part of the District as the parent agreed to the 504 plan, the plan was amended twice to increase accommodations for I.B., and staff consistently followed the plan in watching and assisting I.B. Plaintiff appealed arguing the District acted in bad faith or with gross misjudgment because it treated I.B.'s accommodation plan as discretionary, I.B. continued to sustain injuries at school, and the District did not implement all of Plaintiff's requests regarding I.B.'s safety at school. In support of this argument, Plaintiff pointed to a couple instances where the District did not perfectly follow the 504 plan.

Holding:

The Court held that "no reasonable fact-finder could conclude that the District failed to implement safety accommodations for I.B.'s vision issues" and that there was no evidence the District ignored I. B.'s injuries or her parent's requests for accommodations. The Court found the District took I.B.'s 504 plans seriously and that establishing a violation of § 504 requires "something more than an incorrect evaluation, or a substantively faulty individualized education plan, in order for liability to exist . . . and it requires more than non-compliance with the IDEA statutory mandate to provide a free appropriate public education."

<i>Steckelberg on behalf of AMS v. Chamberlain Sch. Dist.</i>, 77 F.4th 1167 (8th Cir. 2023).
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Background Information:

A.M.S. was a special education student with severe neuropsychiatric conditions. A.M.S. had an IEP, but prior to A.M.S.'s junior year of high school, a behavioral analyst created different support documents for A.M.S. and provided them to school staff. The behavior support plan was included in A.M.S.'s junior year IEP and the IEP required A.M.S. to meet behavior goals with little room for error.

Prior to the start of the school year, A.M.S. got in trouble and a plan was made for A.M.S. to attend classes from home. However, this plan was not effective, and A.M.S. was often unable to access learning materials and had limited contact with teachers. As a result, A.M.S.'s parents and the District considered other options, included an out of state academy. While the District did not expressly approve of the academy, it was unable to find other suitable options. A.M.S.

ultimately went to the academy, succeeded, and graduated. A.M.S.'s parents subsequently filed a due process complaint seeking reimbursement.

Issues:

The state hearing examiner found the District violated IDEA and awarded A.M.S.'s parents costs associated with his placement at the academy. The District sought review of the decision and the parents removed the action to federal court. The federal district court affirmed the hearing examiner's decision and the District appealed. On appeal, the District argued reimbursement for A.M.S.'s placement at the academy was inappropriate because the academy focused on A.M.S.'s behavioral issues, not educational ones.

Holding:

The court held that the District violated IDEA and denied FAPE to A.M.S. The District failed to consider the behavior support plan documents when updating A.M.S.'s IEP and A.M.S. was left at home without adequate academic support. The court also upheld the reimbursement for A.M.S.'s placement at the academy. In particular, the court noted the academy was "equipped to handle A.M.S.'s problematic behaviors and was structured so that students could attend class and counseling during the week" and the court emphasized A.M.S.'s educational progress to the point of graduating and moving on to college. Finally, the court upheld reimbursement for A.M.S.'s travel costs finding the district court did not abuse its discretion.

<i>J.P. by Ogden v. Belton Sch. Dist. No. 124</i> , 40 F.4th 887 (8th Cir. 2022).

Background Information:

A child with intellectual disabilities was enrolled at the School District's elementary school. The child's mother met with the staff at the School to update the child's IEP. A couple months later, the School District told the mother they wanted to determine if the child was eligible for placement at a special school for the severely disabled. After another IEP meeting, the child was found eligible to attend that school. The mother did not agree with the School District's changes to the child's IEP and filed a complaint with Missouri's Administrative Hearing Commission (AHC). The mother wanted the child to remain at the School under the belief it would be the least restrictive environment (LRE). The AHC found the IEP allowed the child to make progress and the school for the severely disabled was his LRE.

The Mother appealed the decision in federal district court, which affirmed the decision of the AHC. On appeal to the 8th Circuit, the mother argued that transferring the child to the school

for the severely disabled would violate his right under IDEA to be educated in the LRE.

Issue:

The issue on appeal was whether the School for the severely disabled was the LRE in which the child received a FAPE.

Holding:

The 8th Circuit affirmed the District Court's decision holding that the school for the severely disabled with implementation of IEP by the school district did not violate the child's right under IDEA. IDEA protects a child's right to receive a FAPE in the LRE, which can mean a mainstream education integrated with children without disabilities unless such education cannot be achieved satisfactorily, where the child makes little or no progress towards appropriate education goals. The Court reasoned that it was appropriate under IDEA to place a student in a less integrated setting when the student would not benefit from mainstreaming. The Court found that there was preponderance of evidence supporting the AHC's conclusion that the integrated placement at the School was outweighed by the benefits available through placement at the school for the severely disabled. The child was not making meaning progress toward reasonable goals in his classes at the School

Cases Before United States District Court for the District of Minnesota

Thompson ex rel. M.C. v. Lakeville Area Schs. (D. Minn. Oct. 8, 2024).

Background Information:

M.C. a sixth grade student has a TBI from a previous car accident as well as a secondary disability of a speech language impairment. In fifth grade M.C. attended some regular education classes, but his IEP has him in a Federal Seetling 3 program receiving more than sixty percent of his class. of his educational services in the special education classroom. When M.C. transitioned to middle school, the district informed the parents that M.C. would not attend his neighborhood school but would instead attend a different middle school within the district had a dedicated classroom to address his needs. The parents maintainted that M.C. should attend his neighborhood school because his friends and classmates from elementary school attended the neighborhood school. The parents filed an ADA Title II claim and Section 504 claim alleging discrimination based on diability and requesting a preliminary injunction.

Issue:

Did the district discriminate against M.C. based on disability when they placed him in a different middle school then his neighborhood school to meet his indiviidual needs?

Holding:

The court held that the parents would not be succesful on their ADA Title II and Section 504 discrimination claims and should not be granted a preliminary injunction. Since the district's proposed placement was appropriate, the district did not engage in unlawful diability discrimination by placing the student in a developmental cognitive disability program. The parents allegation that the district discriminated based on disability by not placing the student in their neighborhood school did not show how the district's placement was made in bad faith, or was a prodcut of disability discrimination.

K.O. by & through J.O. v. Jett (D. Minn. Aug. 25, 2023).

Background Information:

Plaintiffs, K.O. and A.C., were two young adults with disabilities that attended public school. A.C. became ineligible to continue to receive special education instruction upon turning 21 in July 2020 according to the previous version of Minn. Stat. § 125A.03(b). K.O. was set to graduate in 2021, but his graduation date was moved up to July 2020 as he was set to turn 21 prior to the original graduation date.

The former version of Minn. Stat. § 125A.03(b) only provided special education services to a child until they turned 21 years old. The law was amended in 2023 to allow special education services until a child is 22 years old. Plaintiffs allege that their rights under IDEA were violated by the enforcement of the former version of Minn. Stat. § 125A.03(b) which terminated their special-education services before they reached age 22.

Issue:

“The controlling issue in this case is whether the former version of Minn. Stat. § 125A.03(b) (that is, the version that existed before the statute was amended on July 1, 2023) violated the IDEA. It is undisputed that, prior to July 1, 2023, the State did not offer FAPE to students with disabilities until their twenty-second birthdays. It is also undisputed that the State's practice violated the IDEA unless the State fell within the limitation clause—that is, unless the State did not offer public education to students without disabilities until their twenty-second birthdays.”

Holding:

The court found the State offered “public education” for purposes of IDEA to students without disabilities until and after those students reached age 22 when the previous statute was in force. Therefore, the court found the State failed to offer FAPE to Plaintiffs and other members of their class who are now entitled to compensatory education. The court pointed to the State’s adult basic-education programs, which were available to students aged 22 or even older, as meeting the definition of “public education” under IDEA’s limitation to clause in reaching its holding.

Background Information:

A.J.T. is a teenage girl with a severe form of epilepsy. While she has seizures throughout the day, since 2015 she has been unable to start the school day until noon due to morning seizure activity. In the District, the typical school day is 6.5 hours, but A.J.T. has typically been in school for only 4.25 hours due to her IEP. In 2018, when A.J.T. would transition from elementary to middle school, the parties met to discuss a new IEP.

Under the previous IEP, A.J.T. was at school from noon until 4:15 p.m., however the typical middle school day ended at 2:40 p.m. and A.J.T.'s parents were concerned that A.J.T. would have even shorter days in middle school. The parties could not come to an agreement on the IEP, so A.J.T.'s middle school day schedule continued to be from noon to 4:15 p.m. A.J.T.'s parents made various complaints about the school schedule and alleged disability discrimination on the part of the school district. A.J.T. subsequently brought claims alleging violations of IDEA, Section 504, and the ADA against the District.

Issue:

The District moved for summary judgment on all of Plaintiff's claims arguing there was no evidence it acted with bad faith or gross misjudgment. Plaintiff argues the District ignored years of discrimination complaints made by A.J.T.'s parents, violated its own policies, and that its actions were not within the scope of professionally-acceptable options. Plaintiff also argued the District retaliated against A.J.T.'s parents for advocating on her behalf.

Holding:

The court found the evidence failed to establish the District acted in bad faith or gross misjudgment. Plaintiff cited to little evidence and at most the evidence indicated mere negligence. Additionally, the court noted the District lengthened A.J.T.'s school day past the typical conclusion of the school day and modified A.J.T.'s IEP in response to her parent's concerns and the results of an IEE. Likewise, the court found Plaintiff failed to establish a prima facie case of retaliation as there was not causal connection between the District's actions and the parent's advocacy.

Cases Before United States Court of Appeals

Pitta v. Medeiros and Bridgewater-Raynham Regional Sch. Dist., 90 F.4th 11 (1st Cir. 2024).

Background Information:

Pitta is a parent of a child who receives IEP services in the school district. Pitta met virtually with district employees to discuss a new IEP for his child. According to Pitta, the district sought to remove his child from IEP-based special education services but made several statements that were “harmful to [their] argument.” For example, the district allegedly admitted that they “had not data upon which to base their opinion.” After the district allegedly omitted certain facts, including the previous statement, from the official minutes of an IEP meeting, Pitta sought to video record future meetings with district staff. The district denied his request, citing its policy against video recording.

Pitta sued the district and the administrator of special education under 42 U.S.C. Section 1983, alleging a violation of his First Amendment right to record government officials in the performance of their duties.

Issues:

Defendants moved to dismiss the complaint for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. The district court granted the motion, stating that “[u]nder the circumstances, the Court concludes that plaintiff does not possess a First Amendment right to video record a private meeting with school district officials concerning the suitability of an IEP for his minor child.”

Pitta appealed the district court’s decision to the 1st Circuit Court of Appeals. The court recognized a right to record public officials who are performing their job duties in a public space, but disagreed with Pitta that the IEP meeting met this standard here as “the general public is not free to walk into a school and enter a meeting of educators.” The court of appeal held the records Pitta sought to make did not qualify as protected speech under the First Amendment, and upheld the district court’s dismissal of the constitutional claim.

Holding:

The parent could not show that a Massachusetts district violated his First Amendment rights when it denied his request to video record his child's IEP meetings. Determining that the parent failed to state a viable claim for relief, the U.S. District Court, District of Massachusetts

granted the district's motion to dismiss the parent's constitutional claim. The 1st U.S. Circuit Court of Appeals upheld the District Court ruling that dismissed the parent's constitutional claim.

The U.S. Supreme Court denied the petition for a writ of certiorari. *See* 124 LRP 18348.

J.S. v. New York State Dep't of Corr. & Cmty. Supervision, 76 F.4th 32 (2d Cir. 2023).

Background Information:

Plaintiff was diagnosed with a learning disability as a child and received special education services throughout his school years. At age 17, Plaintiff was convicted of a state crime and incarcerated; however, during his three years of incarceration the New York State Department of Corrections did not provide him special education. When Plaintiff was 20 years old, he initiated an administrative proceeding alleging the DOC denied him a FAPE in violation of IDEA.

The hearing officer determined the DOC violated IDEA and directed the DOC to institute various educational measures for Plaintiff. Plaintiff subsequently requested the DOC reimburse him for the attorney's fees he incurred in bringing the administrative proceeding. The DOC refused and Plaintiff brought an action in district court to recover the fees.

Issue:

The district court dismissed Plaintiff's claims on the basis that the fee-shifting provision under IDEA only allows for a parent of a child with a disability to recover fees. Plaintiff appealed arguing the provision should apply to both parents and the child.

Holding:

The Second Circuit held Plaintiff was entitled to recover his attorney fees. The court analyzed the meaning of the term "parent" under IDEA, which defines it as "an individual who is legally responsible for the child's welfare." The court held Plaintiff qualified as an individual who is legally responsible for the disabled child's welfare since he was no longer a minor and was thus "responsible" for his own wellbeing. Additionally, the court reasoned Plaintiff was included under this provision since Congress would not have created an enforcement scheme that disfavored the enforcement rights of "children with disabilities" between the ages of 18 and 21 when IDEA explicitly provided for the provision of services to individuals of those ages.

Background Information:

J.M. is a student at North Carolina Public School District. J.M. was diagnosed with autism spectrum disorder. The School District convened a team to evaluate J.M.'s eligibility in the autism category and requested evaluations in several areas, including adaptive behavior, vision and hearing, educational, speech-language, occupational therapy, and autism rating scales. The team determined J.M. was not eligible for special education under the IDEA because he did not demonstrate at least three of the four impairments required to qualify as a student with autism needing special services as laid out in state policies. The School District thus declined to provide J.M. with an IEP. J.M.'s parent disagreed with the IEP team's conclusion and asked the School District to pay for additional evaluations in five areas. The School District approved funding for the first five areas but declined to pay for the new evaluations.

J.M. petitioned for a contested case hearing. The ALJ ruled in favor of the school district. J.M. then appealed the decision in federal court, which affirmed the ALJ's decision. J.M. then appealed to the 4th Circuit Court of Appeals.

Issues:

On appeal, the issue was whether the School District violated IDEA when it determined the autistic student was ineligible for special education services?

Holding:

The Court affirmed the District Court's decision that the school district did not violate IDEA. That obligation requires States to establish "policies and procedures to ensure" that "[a]ll children with disabilities residing in the State ... are identified, located, and evaluated." 20 U.S.C. § 1412(a) & (a)(3)(A). States must also "develop[] and implement[]" "a practical method ... to determine which children with disabilities are currently receiving needed special education and related services." § 1412(a)(3)(A). But the child find obligation does not require schools to provide an IEP to any student whose parent believes their child is entitled to one. Rather, when a school district has convened an IEP team and comprehensively evaluated a student's eligibility for services, and where the State maintains and follows detailed policies to evaluate children needing such services, the child find obligation has been satisfied. A student does not "need" such services if the student is already getting what would qualify as a free appropriate public education *without* them.

Background information:

M.Q. was a young student with autism. He was mostly nonverbal and had a socially withdrawn demeanor, but he was well-behaved and made progress on his IEP goals. M.Q. was originally placed in a self-contained preschool classroom, however, for the 2018-2019 school year he was placed in a blended preschool classroom where he made good progress toward his IEP goals. Prior to kindergarten, M.Q.'s IEP team met and the District proposed placing him in a general education classroom for non-academic portions of the school day and a self-contained special education classroom for the academic instruction portion of the day.

M.Q.'s parents objected to this proposal and wanted M.Q. to remain in regular education classrooms fulltime with any additional support he may need. M.Q.'s parents refused to sign off on the kindergarten IEP and commenced a due process hearing arguing the self-contained special education classroom was not M.Q.'s LRE. M.Q.'s parents also argued the District violated IDEA by not including M.Q.'s kindergarten teacher at the IEP meeting—instead M.Q.'s current preschool teacher attended. The administrative law judge determined the District violated IDEA as the proposed classroom was not M.Q.'s LRE and denied M.Q.'s Section 504 and ADA claims as duplicative.

Issue:

The District petitioned the district court to review the LRE ruling. The district court affirmed the LRE decision and determined M.Q. had failed to show the District discriminated against M.Q. in developing his IEP. The parties subsequently appealed. The District argued M.Q. requires too much support to be integrated into the regular kindergarten classroom. M.Q. argues the regular kindergarten classroom is his LRE as he was making good progress in the regular preschool classroom environment. Additionally, M.Q. argues the lower court incorrectly denied his Section 504 and ADA claims, contending that he suffered discriminatory segregation.

Holding:

The Sixth Circuit held that the presence of the preschool teacher, rather than the kindergarten teacher, at the IEP meeting did not violate IDEA as the IEP included some provisions for the remainder of M.Q.'s preschool education and thus the District satisfied the plain language of the statute. However, the court did find the District violated IDEA as M.Q.'s LRE is the regular kindergarten classroom. The court noted that the school "may remove a disabled student from the regular class *only* when one of the following factors applies: (1) the student would not benefit from regular education; (2) any regular-class benefits would be far outweighed by the benefits of special education; or (3) the student would be a disruptive force in the regular class." The parties only disputed the second element and thus the court focused on evidence of M.Q.'s progress in the regular preschool classroom, the easy feasibility of additional supports for M.Q. in the regular kindergarten classroom, and the benefit of interaction with classmates in reaching the determination.

In addressing M.Q.'s Section 504 and ADA claims, the court upheld the district court's denial on the basis that M.Q. had not shown any intentional discrimination or failure to reasonably accommodate. The court noted that to successfully state a claim under Section 504 or the ADA, the student must allege more than a school's failure to meet its obligations under the statute. Additionally, the court noted it did not need to reach the issue of whether the District exercised bad faith or gross misjudgment as M.Q. did not show he suffered any form of discrimination.

Cases Before United States District Courts

<i>Cease v. Henry</i> , 2023 WL 5333211 (D.S.D. Aug. 18, 2023).

Background information:

J.C. has autism spectrum disorder and ADHD. During the 2019-2020 school year, J.C.'s parents discovered school staff had not been following J.C.'s IEP and that J.C. had been subjected to physical restraint, forced to eat "unsafe" foods, and had been left in soiled pull ups. J.C.'s parents initially commenced an action in federal court alleging violations of the IDEA, ADA, and Section 504. Plaintiffs then filed an Amended Complaint removing the IDEA claims and adding the South Dakota Department of Education as a defendant.

Defendants moved to dismiss the claims. The district court granted the motion to dismiss on the basis that the action was barred under IDEA based on *Fry v. Napoleon Cmty. Schools*, 580 U.S. 154 (2017). While the case was on appeal, the Supreme Court decided

Perez v. Sturgis Public Schools, 143 S. Ct. 859 (2023) which interpreted IDEA's exhaustion requirement to not apply as broadly as *Fry* implied. The case was subsequently remanded to the district court.

Issue:

On remand the Department of Education filed a motion for reconsideration of the motion to dismiss. The court determined that in light of *Perez*, reconsideration of the entire motion to dismiss was proper, specifically whether Plaintiff's claims were barred by IDEA's exhaustion requirement and limitations period.

Holding:

The court held that the exhaustion requirement under IDEA was inapplicable to this action because Plaintiffs only sought compensatory damages, not relief that was also available under IDEA. The court relied on the holding in *Perez* which found a plaintiff is required to "exhaust the administrative processes found in subsections (f) and (g) only to the extent he pursues a suit under another federal law for *remedies* IDEA also provides." When a plaintiff brings a suit for compensatory damages, which is a form of relief that IDEA does not provide, administrative exhaustion is not required.

However, the court granted the dismissal in favor of the Department of Education on the basis of Eleventh Amendment immunity. As an arm of the state, claims against the department could not be brought without a waiver or exception. The court noted that no exception could exist here because Plaintiffs did not name any individual working for the Department of Education as a party, they only named the department itself.

Cases Before the Minnesota Department of Education

Complaint Decision 23-130C (2023).

The Complaint resulted from a lack of speech and language services from a Speech Language Pathologist (SLP) for the 2022-2023 school year. The District had a vacant SLP position for the 2022-2023 school year that it was unable to fill. While the school was able to contract with a SLP to provide services during the year, students did not receive all of the speech/language services in their IEPs and parents did not receive progress reports.

The MDE acknowledged the teaching staff shortage many school districts are facing, but held that under IDEA, the District is required to continue to provide FAPE even if it is experiencing a staffing shortage. The MDE found the District violated IDEA when, during the 2022-23 school year, it did not provide speech/language related services in conformity with the students' IEPs and did not regularly inform the students' parents of their progress toward their communication goals at least as often as parents were informed of their nondisabled student's progress. The District and the MDE developed a plan in which students would receive compensatory speech/language services during the 2023 summer break.

Cases Before the Minnesota Office of Administrative Hearings

OAH No. 5-1300-38822

Parents of a student filed a complaint after the District refused to provide a structured literacy program as part of the student's IEP. The student was homeschooled, but received special education services through the District. The student's IEP focused on services to help student improve reading, writing, and spelling. In fall of 2022, the parents became concerned the student was not meeting IEP goals and inquired about including a structured literacy program in the student's IEP. Subsequently, a revised IEP was developed and consented to by the parents; however, this IEP did not specify the use of a structured literacy program.

The District began providing the student special education services using the "REWARDS" structured literacy program, in addition to other writing and spelling services. In October 2022, parents informed the District the student would no longer attend the general education language arts teacher's class because the parents were upset the teacher referred to "Columbus Day" and Indigenous Peoples' Day and made a remark about Henry Ford's politics in the 1930s. The parents requested the student receive the structured literacy program in a small group or one-on-one setting, rather than in the language arts class. An IEP meeting was held and the District proposed which changed the student's service location to a resource room every other day for twice the amount of time per session. The parents rejected the proposal as it would disrupt the student's homeschool day. The parents stopped sending the student to school altogether and initiated a complaint.

The administrative law judge (ALJ) found that the District violated IDEA because the IEP did not document the structured literacy program provided to the student, but that this procedural violation did not result in a denial of FAPE to the student. The ALJ held that "when special education services based on peer-reviewed research are available, and the IEP team determines they will be used, those services must be documented in the IEP." However, the ALJ noted that there was no denial of FAPE in part because the District could not be held accountable for services it was not permitted to provide after the student was removed from the school and that parents do not have the right to dictate the classes a student attends or their teachers at school unless a statutory exemption is met.

Parents of student with Autism Spectrum Disorder requested the student's ABA therapist be allowed to attend school with the student. The District denied this request as the District policy did not allow private third-party providers in the schools due to privacy of students, inability to supervise private providers, and space constraints in school buildings. In order for the student to continue receiving significant ABA therapy services, the parents removed the student from school all day on Mondays, Wednesdays, and Fridays, so the student could attend ABA therapy sessions. The IEP team subsequently met to discuss the ABA therapy request and following the meeting the District rejected the request noting multiple reasons including the fact that the student did not have an "educational need" for ABA therapy in school, the one-on-one ABA therapy was not the least restrictive environment for the student, and the student had an educational need to attend school five days a week.

The ALJ found that the student did not have an educational or medical need for an ABA therapist presence in school. The ALJ also found that the student's signs of regression in the student's communication skills and other IEP goals was attributable to the student's limited school attendance. Thus, the ALJ determined that the parents failed to establish the IEP did not provide the student with FAPE in the least restrictive environment. Additionally, the ALJ noted that the IEP was reasonably calculated to enable the student to make progress and that the District is not required to "maximize a student's potential or provide the best possible education at public expense."

Parents of a student with significant disabilities requested a paraprofessional or school staff member act as the handler for the student's service dog. The dog was trained to perform various therapeutic tasks for the student and was shown to be effective at helping the student become calm and focused. The District allowed the dog to attend school with the student as a service animal but denied the parent's request for school personnel to serve as the dog's handler. The parents then requested the use of the service dog be added to the student's IEP with "three general accommodations" in the form of assistance with tethering/untethering, holding the leash, and prompting the dog with commands as needed. The District also refused this request as the accommodations were not necessary for the District to provide the student with FAPE and District policy prohibited staff from acting as handlers.

The parents filed a request for a due process hearing, arguing that the aid of a handler is a “related service” under IDEA and therefore a handler should be provided at public expense. Prior to the hearing, the parents informed the District that the student would be homeschooled until the requested relief was available. Since this amounted to a disenrollment of the student in the district, the due process hearing was dismissed. The parents then reenrolled the student and filed a second due process complaint.

The ALJ found that the student established provision of a handler for the service dog at public expense was necessary for FAPE. Additionally, the ALJ found the “required supports” for the student’s service dog were “less intrusive and less intense than other ‘related services’ paraprofessionals customarily provide.”

Cases Before the Minnesota Court of Appeals

In re: Special Education Complaint 23-157C, A23-1442, (Minn. Ct. App. July 1, 2024).

In this case a Minnesota school district denied FAPE to a transfer student with autism when it failed to make sure that he had an IEP on the first day of the school year 2022-2023. The Minnesota Court of Appeals upheld an MDE decision requiring the district to develop an appropriate IEP, provide compensatory services, and train staff on the IDEA's procedural requirements.

Background Information:

A high school student with Autism transferred from Pennsylvania to a Minnesota district in the summer of 2022. The student's previous district provided both his most recent IEP and re-evaluation, both dated from September 2021. The district decided to undergo an initial evaluation for the student which was not completed until January 2023. The Court of Appeals affirmed the MDE's decision and stated that the District violated the student's FAPE by not having an IEP in place for the first day of school, after the parents had enrolled the student in the school during a late summer transfer. The key takeaways are as follows:

Holding:

IDEA requires that districts have an IEP in place for students who transfer to the District. The District is responsible for getting the necessary documentation from a student's previous district.). [34 CFR 300.323](#) (f). Any lapse in IDEA services due to an interstate transfer is a denial of FAPE for a student.

Complaint Decision File 23-010C on behalf of D.V.G., No. A23-0487, 2024 WL 413494 (Minn. Ct. App. Feb. 5, 2024).

Background Information:

In the *D.V.G.* case, the Minnesota Court of Appeals upheld a state complaint decision awarding compensatory services to a student with an emotional disturbance, as the District failed to provide written notice of her suspension on at least three occasions. The MDE found that 1) the school district did not provide the parent or the student with a written notice regarding

suspensions in violation of PFDA, Minn. Stat. § 121A.46 and 2) the district violated IDEA by not properly responding to the parent’s request for an IEE.

Holding:

The Court of Appeals held that PFDA is expressly applicable to students with disabilities and the student’s parents should have been provided with notice of her suspensions. Furthermore, the Court of Appeals upheld the award of compensatory services stating that the MDE properly calculated the appropriate tutoring hours necessary for *D.V.G.* The key takeaways are as follows:

Procedural violations of education laws that pertain to all students can impact a special education student’s access to their Free and Appropriate Public Education. A district may be required to provide compensatory special education services because of their failure to comply with other general education laws.

When a hearing officer determines that a district failed to provide required services, it has broad “authority to order... compensatory education plans.” *Bonney*, 705 N.W.2d at 215; see also 34 C.F.R. § 300.151(b)(1) (providing that a state educational agency may order "corrective action appropriate to address the needs of the child," including through "compensatory services”).

Special Educ. Complaint 22-027C on Behalf of V.W., 981 N.W.2d 201 (Minn. Ct. App. 2022). ¹

In this case, three students were enrolled in the Waconia Public School District. All three students were eligible for special education services and had existing IEPs through the School District. The School District offered services for the students during the school year, but the students’ parent refused to cooperate. The parent’s main concern was the removal of masks in the school during the COVID-19 pandemic. In light of this, the parent told the School District the students would not be returning to the School District for the 2021-2022 school year. In compliance with Child Find, the School District offered to meet with the parent to discuss services while the students were homeschooled or until they enrolled in another school district. When the School District offered both in- person classes and a homebound educational plan, the parent refused both. The parent then emailed the School District demanding a “pod situation” where the students would receive services in a masked room with a teacher who has

¹ The parents in this case filed a separate, federal, lawsuit seeking damages, as well as a discrimination charge with the Minnesota Department of Human Rights. Both the charge and the lawsuit were dismissed.

had limited exposure to the school population, a private bathroom, wiping down all tables, and personal items be kept in the classroom. In response, the School District offered classes in the district office, but the parent declined this offer.

The parent then filed a complaint against the School District with the Minnesota Department of Education (MDE). The parent alleged the School District failed to provide the students with a FAPE and had failed to consider the parent's concerns for enhancing the students' education. MDE's decision held that although the School District made extensive efforts to develop new IEPs and the parent refused to cooperate/rejected all offered services, "merely making services available" was not enough. MDE ordered the School District provide compensatory education as a corrective action.

The School District filed a certiorari appeal from MDE's decision. As the Court of Appeals framed it, the issue in the case was "did MDE err in concluding that the District violated state and federal law when the District offered and made available special education services in conformity with the students' existing IEPs that the students did not receive due to their parent's rejection of the services and refusal to cooperate with the District?"

The Court overturned MDE's decision and held that the School District did provide a FAPE to the students. Specifically, the Court held "MDE's decision failed to apply the plain language of Minnesota Statute, section 125A.08(b), and the corresponding federal regulation by interpreting the obligation to "provide" special education services to require that a student actually receive those services." Section 125A.08(b) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs." The Court drew a distinction between "providing students with special education and related services" and "receiving these services." The Court held when a school district offers or makes available special education services in conformity with a student's existing IEP, but those services are not received due to a parent's rejection of the services and refusal to cooperate with the school district, the school district does not violate Minnesota law. The Court also noted that MDE's interpretation was unreasonable because it failed to recognize the parent has a reciprocal obligation to operate within the procedural framework of IDEA.

In re Complaint Decision File 21-010C & 21-031C on behalf of C.L.C. from I.S.D. 0833- 01, No. A21-0484, 2022 WL 17135 (Minn. Ct. App. Jan. 3, 2022), review denied (Mar. 29, 2022).
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C.L.C. is a middle school student. C.L.C. has significant hearing loss that has made him eligible for special education and has an IEP. C.L.C. attends non-public school for his regular school instruction, but he receives special education services from the School District on a shared-time basis since February 2013. Previously, the School District provided an assistive-technology device for non-public school curriculum. In 2020, upon instituting a

district-wide policy on assistive-technology devices, the School District determined it was not legally obligated to provide assistive-technology devices to shared-time pupils while at their non-public schools. Rather, the District was only required to provide assistive-technology devices while the shared-time pupils received instruction from staff of the School District. For certain parts of the school year, C.L.C. was not provided with the assistive- technology device despite struggling in school.

The principal of the non-public school and the Student's parent filed a complaint with MDE in fall of 2020. Specifically, the complaint alleged the School District's refusal to provide the Student with the FM system for use at the nonpublic school violated IDEA and related state law and requested that MDE order the school district to provide the FM system. MDE's decision held the School District violated the IDEA when it "failed to consider and include the Student's use of the FM system at the Student's [nonpublic] school when developing the February 2020 and September 2020 IEPs"; "failed to discuss the removal of the FM system at the January 22, 2020 IEP team meeting [thereby] ... denying [the student's mother] the ability to meaningfully participate in the IEP team process" as required by IDEA; and "failed to adequately describe the actions proposed by the [school district] in the February 5, 2020 prior written notice and refused by the [school district] in the September 15, 2020 prior written notice." As corrective action, MDE ordered the School District to revise the Student's IEP to include the provision of the FM system for the Student's use at the non-public school and assess if additional compensatory services were necessary for the student. MDE also ordered the School District to prepare and disseminate a memorandum for "continuous improvement training" explaining the School District's obligations to shared-time pupils.

The School District filed a certiorari appeal from MDE's decision.

In the Court of Appeals, the issues relate to MDE's decision that the School District is legally obligated to provide an assistive-technology device—the FM hearing system—to the Student for his use at his non-public school.

In this case, the Court of Appeals upheld MDE's decision. Specifically, the Court rejected the School District's argument that its decision to limit use of the assistive-technology device to the public school instruction was lawful under Minn. Stat. § 126C.19, subd. 4(b). Rather, the School District's failure to make the decision about the assistive-technology device violated the IDEA. The Court also rejected the School District's argument that this would impose a burden to constantly monitor the education offered at private schools.

The Court held that this was simply providing a device for the Student and does not require monitoring of private school curriculum. The Court further rejected the School District's argument that requiring the School District to complete a memorandum for continuous improvement training is too excessive a corrective action and it limits the School District's discretion to determine the location of special education services. The Court held that the memorandum focuses on the School District's obligation to make decisions on a case-by-case

basis moving forward.

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