NYSE Directors
Centris Group

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Read All About It!

A Monthly Synopsis of Salient Cases in Special Education

INTRODUCTION

In this issue of *Read All About It*, we review several decisions, which contemplate issues ranging from IDEA's LRE requirement to the well-settled legal principle that a parent's speculation that the district will be unable to meet the student's IEP requirements, will not warrant a finding that the district denied FAPE. Specifically, one federal court determined that in light of the student's failure to actually participate in the proposed program, speculation that the district would have been unable to satisfy the student's IEP-mandates did not warrant a finding that the district denied FAPE. Another decision from the same court, concluded that based upon the unique facts of the case and clear evidence that the district would have been unable to meet the student's IEP mandates had the student actually participated in the proposed program, the parent's speculation was founded, and thus, determined that the district denied FAPE.

Second Circuit Court of Appeals

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1. A Parent's Overly Restrictive Placement Bars Claim for Reimbursement.

D.D.-S v, Southold Union Free Sch. Dist., 2012 WL 6684585 (2d. Cir., 2012)

SALIENT FACTS:

After alleging that the district denied FAPE during 2008-09, the parents sought reimbursement of tuition for the Landmark School ("Landmark") in Massachusetts. The SRO affirmed the IHO's denial of reimbursement, and the district court affirmed the SRO's decision. Because the district conceded that it failed to offer FAPE, the court's decision did not address the first prong of the Burlington-Carter analysis. Ultimately, the court concluded that Landmark was an inappropriate placement and denied the parent's request for reimbursement. The parent appealed.

COURT'S DECISION:

As the party seeking reimbursement, "[t]he parent bears the burden of proving that her unilateral placement was appropriate" (citations omitted). The parent argued that the district and court placed too much emphasis on the restrictiveness of Landmark in denying reimbursement. The Second Circuit disagreed. The Second Circuit concluded that, while private placements need not meet the same rigid LRE standards as those proposed by school districts, the restrictiveness of the unilateral placement is a consideration in determining whether the placement was appropriate. The parent argued that the student's academic progress at Landmark made it appropriate. However, the Court noted that the parent presented no evidence that Landmark's "extremely restrictive residential immersion was appropriate for [the student's] educational needs." The district court pointed out that at Landmark, the student performed one full year above grade level and excelled in the advanced classes in which she requested to be placed. The Second Circuit agreed with the District court's determination that the student did not need to be separated from her community or from nondisabled peers to receive an educational benefit.

WHY YOU SHOULD CARE:

Although a district may have denied FAPE, a parent may still be denied tuition reimbursement for a unilateral placement where the placement is inappropriate and overly restrictive. When determining whether the parent's unilateral placement is appropriate, the main issue is whether the placement is reasonably calculated to enable the child to receive educational benefits. See Application of the NYC Dept. Of Educ., Appeal No. 08-092 (Oct. 17, 2008). While evidence of the student's progress at a private school is relevant, it does not itself establish that a private placement is appropriate. Id. A private placement is only appropriate if it provides education instruction *specifically* designed to meet the *unique* needs of the child. Id. While districts are required to comply with IDEA's

LRE requirement, the issue of LRE is also relevant when determining whether the parent's unilateral placement is appropriate. When the student does not require the level of restrictiveness provided by the unilateral placement in order to receive educational benefit, there is a persuasive argument that the private placement is overly restrictive, and therefore inappropriate. Evidence that while in the private placement, the student is performing at or above grade level may support the district's position that the student was capable of progressing in a much less restrictive setting than that in which the student was placed. If the student is participating in advanced or honor classes in the unilateral placement, this may support the position that the private placement is too restrictive.

Federal District Courts

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1. A Parent's Speculation About The District's Ability to Meet the Student's Sensory Needs Does Not Warrant Unilateral Placement.

Reyes ex rel. R.P. v. New York City Dept. Of Educ., 2012 WL 6136493 (S.D.N.Y., 2012)

SALIENT FACTS:

A student diagnosed with autism, sensory integration dysfunction, moderate mental retardation, and ADHD, had difficulty processing information. The student required sensory input throughout the day in order to remain calm and maintain control over his behavior. The student had been parentally placed at the Rebecca School ("Rebecca") since May 2007. For 2010-11, the CSE recommended a 6:1:1 class; ESY services; and related services including, but not limited to speech, counseling, O/T and P/T; along with eighteen annual goals and a 1:1 paraprofessional for a three-month period to assist the student in transitioning back to public school.

After visiting the proposed class, the parent rejected the program. The parent reasoned that when she asked what type of "sensory diet" was provided in the classrooms, the teachers discussed food; when she asked what would happen if the student needed to be regulated, the teachers showed her to a corner of the room with mats, a bookshelf and deflated ball. Accordingly, the parent concluded that the district would have been unable to meet the student's sensory needs. The parent maintained the student's placement at Rebecca, where he was placed in an 8:1:3 class; received related services of speech, O/T, P/T and music therapy. To meet the student's sensory needs, Rebecca implemented an individualized sensory diet that provided movement and sensory input every 30 minutes, throughout the school day. The parent's request for tuition reimbursement was granted by the IHO and the decision was reversed by the SRO.

COURT'S DECISION:

On appeal from the SRO's decision, the parents alleged that the SRO erred in finding that the recommended 6:1:1 class with a transitional 1:1 aide offered FAPE. The District court concluded that the SRO's decision was entitled to deference.

As a preliminary matter, the court relied upon a recent Second Circuit Decision in finding that the SRO improperly relied upon district staff testimony about the services the district *would have* provided, despite these services being absent from the IEP. See R.E. ex rel. J.E. v. NYC Dept. Of Educ., et al., 2012 WL 4125833 (2d Cir., 2012). Nevertheless, according to the Court, the SRO's erroneous reliance on this retrospective testimony did not render the remainder of his analysis improper. The court noted, among other things, that the SRO relied upon district staff testimony that the combination of the 6:1:1 program and the "panoply of 'weekly related services' outlined in the IEP" would promote progress. Because the SRO reasonably concluded that the recommended program was substantially adequate, the court determined that the SRO's decision was entitled to deference.

As to the adequacy of the public school, the court addressed the parent's concern that the school would have been incapable of meeting the student's sensory needs. The public school did not have sensory integration equipment such as swings. At the hearing, Rebecca staff testified that suspended equipment was the "most effective" therapy to address the student's need for vestibular input. Despite the parent's assertion, the court affirmed the SRO's holding that the district was not required to provide the optimal level of service that would confer additional benefits. Next, the court addressed the parent's argument that upon visiting the proposed school with the Rebecca occupational therapist prior to the start of the school year, the Rebecca therapist did not observe any equipment at the public school capable of addressing the student's needs. The court deemed any speculation that the district would be unable to adequately adhere to an IEP to be without merit. Moreover, this speculation was not an appropriate basis for a unilateral placement.

Next, the court addressed the parent's concerns about the TEAACH methodology employed in the district school. The parent contended that the TEAACH methodology would have been inappropriate for her son because it requires students to independently complete certain tasks in sequence. However, the student was rigid, required supervision, and had difficulties with motor planning and sequencing. The court affirmed the SRO's decision that the intended district teacher would have tailored the implementation of any teaching methodology to the individual needs of each student. As such, the court affirmed the SRO's denial of tuition reimbursement.

WHY YOU SHOULD CARE:

While a parent may prefer a school with certain aspects different from the public school, where the public school's services are capable of meeting the student's special education needs, additional services may be unwarranted. Even where the parent believes that the district will be incapable of satisfying the student's IEP requirements, this belief is speculative if the student did not actually attend the proposed school. A court will be reluctant to find that the district denied FAPE based solely upon speculation. This is true, even where, as here, the parent's belief is based on conversations she has had with district staff or observations made of the proposed school or class. However, as we discuss further in B.R. v. New York City Dep't of Educ., 2012 WL 6691046 (S.D.N.Y., 2012), below, where the parent's belief that the district is incapable of meeting the student's IEP-mandated services, is corroborated by district staff, a court will be more inclined to find that the district has denied FAPE, even if the student never actually attended the proposed program.

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2. Testimony Regarding What Services the Student "Would Have" Received Fails to Rebut Parents' Claim That The District Denied FAPE.

B.R. v. New York City Dept. Of Educ., 2012 WL 6691046 (S.D.N.Y., 2012)

SALIENT FACTS:

Beginning in February 2009, a student with autism was placed at the Rebecca School ("Rebecca") per the terms of a settlement agreement. For 2010-11, the CSE recommended that the student be placed in a district 6:1:1, 12-month program with related services, including 1:1 O/T. By the beginning of June, the parent had not received the district's proposed placement. As a result, she signed an enrollment contract with Rebecca for 2010-11 and paid a $500 deposit, which obligated her to pay Rebecca's $92,100 tuition. Almost two weeks later, the parent received the district's final recommendation of a public school placement. Upon visiting the proposed school, the parent rejected the recommendation. The parent based her rejection on the ground that the proposed school would be incapable of implementing the student's IEP. Specifically, the parent alleged, among other things, that the proposed school could not implement the CSE's 1:1 O/T recommendations. The SRO disagreed on the grounds that the parent's belief was speculative and reversed the IHO's decision in the parent's favor.

COURT'S DECISION:

As a preliminary matter, the court pointed out the Second Circuit's position that where the court reviews conflicting decisions between the IHO and SRO:

[T]he court should give substantial deference to the SRO's views of educational policy, but less to the SRO's factual findings or to its reasoning in general. [] Thus, the [c]ourt must determine whether the SRO's decision is "well-reasoned, and whether it was based on substantially greater familiarity with the evidence and the witnesses than the reviewing court" (*citing* M.H. v. N.Y.C. Dep't of Educ. (M.H. II), 685 F.3d 217 [2d Cir., 2012]).

The court noted that the parents did not challenge the substance of the IEP. Rather, they challenged the placement in the proposed school. Specifically, the parents challenged whether the proposed school would be able to satisfy the IEP requirements. The CSE determined that the student required "significant sensory integration." As a result, the CSE recommended 1:1 O/T three times weekly for thirty minutes outside of the general education classroom. The court noted that the IHO pointed out that, "it was clear that the severity of [the student's] disability required the 1:1 [O/T] to be provided at the school in order for [her] to make progress." However, when the parent visited the proposed school prior to the start of the school year, the occupational therapist on staff informed her that "[O/T] at the school was provided in a group of six students four days a week, inside the classroom." The court evaluated whether at the time the parent was considering the proposed placement, the school could offer the services in line with the student's IEP. The court held that the parent's understanding of how O/T would have been provided was corroborated by the assistant principal's ("AP") testimony that "'per the directive of the [d]istrict, [the student's] school would have had in-class[] group therapy [for OT]." It was the school's policy to provide students with group O/T as a push-in service. Despite the AP's testimony that the student would have received 1:1 OT, when pressed by the IHO, the AP testified that she had no knowledge of any students in prior school years who had been prescribed and received 1:1 therapy in addition to group O/T.

Despite this testimony, the district argued that the group O/T would have been provided in addition to, not at the exclusion of, services at other ratios. However, of paramount importance in the court's consideration of this argument was the recently pronounced Second Circuit position that "retrospective testimony that the school district would have provided additional services beyond those listed in the IEP may not be considered in a *Burlington/Carter* proceeding" (*citing* R.E. ex rel. J.E. v. NYC Dept. Of Educ., et al., 2012 WL 4125833 [2d Cir., 2012]). The court noted that, without specifically citing to the record, the SRO found that the IHO's determination that the student would not have received the IEP-mandated O/T services was "speculative insofar as the [student] did not attend the district's assigned school." The court disagreed. The court wrote:

> These conclusory assertions utterly fail to meet the M.H.[] standard. Notably absent, along with any other particularization, is any discussion whatsoever of the 1:1 issue, let alone any discussion of whether there was sufficient evidence to infer that the school's

normal [group] in-class [O/T] was in fact supplemented by any 1:1 outside [O/T].

The court was unpersuaded that the student would have received the required level of O/T. Rather, the court held that the only evidence supporting the district's position that the student would have received the IEP-mandated O/T recommendation was the "unsubstantiated testimony" from the AP. In rejecting the SRO's decision as insufficiently reasoned and unsupported by the record, the court deferred to and adopted the IHO's decision that despite the fact that the student never actually attended the proposed school, the district would have been unable to implement the student's IEP, and therefore, denied FAPE.

As a result of this finding, and the district's failure to appeal the IHO's determination that Rebecca was appropriate, the court addressed whether equities weighed against reimbursement. The court concluded that the parent's placing a $500 deposit and signing a contract with Rebecca did not support the district's argument that the equities weighed against reimbursement. The court agreed with the IHO that the parents "worked with the [district] every step of the placement process. They made their desire to keep [the student] at Rebecca [] known, but did not make it an absolute condition."

WHY YOU SHOULD CARE:

On the heels of R.E. ex rel. J.E. v. NYC Dept. Of Educ., et al., 2012 WL 4125833 (2d Cir., 2012), many districts find themselves looking for ways to defend IEPs that lack sufficient detail regarding the programs and services students would have received had they attended the district's recommended program. As this case illustrates, there are two points that districts should consider in tuition reimbursement cases: (1) the district may not present retrospective testimony regarding special education services it would have provided had the student actually attended the proposed program where these services are absent from the IEP; and (2) although specific services may be listed in the IEP, if the district has a policy, or perhaps a practice, of not providing the services at the level mandated by the IEP, retrospective testimony to the contrary will likely be ignored by the court.

Perhaps the most important lesson of this decision is that districts should not adopt policies or implement practices that limit their ability to provide services on an individualized basis. You cannot impose programmatic O/T on a group basis to satisfy an IEP which mandates individual services. The programmatic service can supplement what the IEP calls for, it cannot supplant it. Remember, the four dirty words never to be repeated at a CSE meeting are "We don't do that." Even if you don't, don't say it at a meeting. Find a way to meet IEP mandates.

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3. Clear Evidence of Parents' Repeat Challenges to Each Year's IEP Satisfies Exception to Mootness Doctrine.

New York City Department of Educ. v. S.A. and J.A., 2012 WL 6028938 (S.D.N.Y., 2012)

SALIENT FACTS:

Parents were awarded reimbursement of tuition paid to the Aaron School ("Aaron") for the 2004-05, 2005-06 and 2006-07 school years in three successive IHO decisions. The IHO's award of tuition reimbursement for 2009-10 was reversed by the SRO and the SRO's decision was affirmed by the district court. An IHO awarded tuition reimbursement for 2010-11 and the district appealed this decision to the SRO. Prior to the issuance of the SRO's decision, the district reimbursed the Parents for the costs of all tuition and related services paid to Aaron during 2010-11 as required under pendency. The SRO dismissed the district's appeal as moot because the district had fully reimbursed the parents for 2010-11, and therefore, "the parents [had] already received all of the relief they were seeking at the impartial hearing." The district appealed this decision, on the grounds that an exception to the "mootness doctrine" existed, and therefore, the case should have been decided on the merits and should not have been dismissed as moot.

COURT'S DECISION:

On appeal, the district argued that the case is not moot because the alleged deficiencies in the IEP were "capable of repetition yet evading review." The court agreed. The "capable of repetition yet evading review" exception to the mootness doctrine is a narrow one that applies when: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again. The court held that both conditions applied here. The court pointed out the Second Circuit Court of Appeals' position that,

> [U]nless the question of the [d]istrict's obligation to pay the student's tuition pending resolution on the merits of a [] proposed, and rejected IEP is resolved[,] the parents' legal claim for tuition payment during such pendency will likely be repeated, perhaps as often as every school year, and will continue to evade review (*citing* Bd. Of Educ. Of the Pawling Cent. Sch. Dist. v. Schutz, 290 F.3d 476, n.1 [2d Cir., 2002]).

Indeed, by the time of the district's appeal of the SRO's decision regarding the 2010-11 IEP, the parents had already filed a demand for due process challenging the district's proposed IEP for 2011-12. Therefore, the court held that the "reasonable expectation" of repetition necessary to bring the action within the

mootness exception was satisfied. As such, the court remanded the matter to the SRO for reconsideration of the merits of the case.

WHY YOU SHOULD CARE:

Under IDEA's "stay put" provision, during the pendency of any proceeding challenging the appropriateness of the district's proposed IEP, the child remains in his or her then-current educational placement regardless of the merits of the parents' complaint. Therefore, the district must continue to fund the child's last agreed-upon placement unless, and until, a new placement is established by an unappealed administrative decision upholding the appropriateness of a change in placement. Generally, where the parents have received the relief they have requested in their complaint during the pendency of the proceedings, the administrative review officer will dismiss the matter as "moot." Under these circumstances, it is thought that any decision on the merits would be purely academic and have little actual effect on the parties. Administrative review officers and federal courts will only decide matters in actual controversy, and will not render a decision concerning a controversy which subsequent events have laid to rest. See Gabel ex rel. L.G. v. Board of Educ. of the Hyde Park Cent. Sch. Dist., 368 F. Supp. 2d 313 (S.D.N.Y., 2005).

However, an exception to this "mootness doctrine" exists where the issues are capable of repetition yet evading review. Challenges to the IEP generally concern individual school years and are usually pursued shortly before the start of the school year, during the year or after its completion. As a result, there is often limited time to fully litigate the merits of the case prior to the district providing the parents with all of the relief requested under pendency. Accordingly, although many challenges to IEPs may be dismissed as moot because the parent has already received the relief requested, these same challenges may satisfy the first prong of the mootness exception (i.e. the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration). Parents often maintain their children in unilateral placements for successive years, reject the district's proposal each year and seek tuition reimbursement. Where it is evident that the parents will continue this pattern, the reasonableness factor of the mootness exception (i.e. there is a reasonable expectation that the same complaining party will subject the district to the same or similar action again) will likely apply. As such, although a district may have already provided the parent with the relief demanded in the complaint under pendency, where there is clear evidence that the parent will continue the pattern of rejecting the district's recommendation, unilaterally placing the student and seeking tuition reimbursement, a district will have a persuasive argument that the case should be decided on the merits. Otherwise, the district may find itself on the hook for tuition at unilateral private placements for years to come.

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4. The Prevailing Party Has No Responsibility Or Right to Cross-Appeal Any Portions of an IHO's Decision.

D.N. v. New York City Dept. Of Educ., 2012 WL 6101918 (S.D.N.Y., 2012)

SALIENT FACTS:

The parents of a nonverbal student with autism appealed the SRO's reversal of an IHO's decision awarding them reimbursement of tuition paid to the Rebecca School ("Rebecca") during 2010-11. The student had significant sensory needs, required frequent sensory input (e.g. swings), and engaged in self-injurious behaviors. Since 2006, the student had been parentally placed at Rebecca. For 2010-11, the CSE recommended a 6:1:1 program with related services of O/T, P/T, speech and counseling. In response to the parents' concerns that the student required more support than that offered by a 6:1:1 program, the CSE recommended a 1:1 crisis paraprofessional. The IEP provided a BIP to address the student's aggressive, self-injurious and other interfering behaviors. The parents rejected the CSE's recommendation, maintained the student's placement at Rebecca and sought tuition reimbursement.

The IHO agreed with the parent that the district predetermined the student's placement in a 6:1:1 without according "due consideration" to the parent's opinions; and (2) the proposed placement was "fatally flawed" insofar as it did not provide swings or other "appropriate sensory equipment."

The SRO reversed this decision on the grounds that the record did not support the IHO's decisions. Specifically, the SRO relied, in large part, on the CSE Meeting Minutes in finding that the parent and Rebecca representatives were able to communicate their concerns about the proposed program, goals and related services. See Application of the NYC Bd. Of Educ., Appeal No. 11-086 (Aug. 29, 2011). Specifically, in response to the mother's concerns for a 12-month program and more support than the recommended 6:1:1 program, the CSE recommended a 12-month program and 1:1 crisis professional. Regarding the proposed school's sensory equipment, the SRO pointed out that the IHO "relied solely on the lack of a swing and appropriate sensory equipment in the assigned classroom to conclude that the proposed program was deficient and that the student was denied a FAPE." Although the parent alleged that the district failed to address the student's sensory needs, the IHO did not conclude that the ***content*** of the IEP was inappropriate; rather, that the absence of a swing denied FAPE. As such, the SRO held:

> [There was] little basis upon which to predicate a determination that the district was required, among various sensory integration techniques, to use a swing upon implementing his IEP or that the district lacked any appropriate sensory equipment to address the student needs and the issue is in large part speculative.

COURT'S DECISION:

On appeal from the SRO's decision, the parents raised claims that were raised in their complaint, but unaddressed by the IHO or SRO and not appealed to the SRO. The district argued that any aspect of the IHO's decisions not cross-appealed by the parent, including the IHO's decision not to reach a particular claim was final and binding, and therefore, not subject to the court's review. The court disagreed. The court reasoned that, "it does not [] follow that a party who does not cross-appeal a favorable IHO decision is precluded from asserting alternative grounds upon which a reviewing court might sustain or reinstate the IHO's judgment." Here, the parent received the precise relief sought in due process: reimbursement for tuition paid to Rebecca. Thus, the parent was not aggrieved, and therefore, had neither a responsibility for nor any right to appeal the IHO's decision. Because the court determined that the SRO was "uniquely well suited to review the content and implementation of the student's IEP," the matter was remanded to the SRO for his consideration of the merits of the unappealed and unaddressed claims articulated in the parent's complaint.

WHY YOU SHOULD CARE:

Generally, a party may only pursue an appeal if he or she has been "aggrieved" by the IHO's findings of fact and decision. See 8 NYCRR §200.5(k)(1). When a party has received the exact relief sought in due process, the party will not be considered "aggrieved." Therefore, that party has neither the right nor the responsibility to appeal any portions of the administrative decision. However, where: (1) the IHO and SRO have failed to address claims raised in the Complaint, and (2) the prevailing party becomes the aggrieved party in the SRO appeal, the unaddressed and unappealed claims may be addressed by the federal court. Here, the court found persuasive that the claims raised in the federal appeal, but unaddressed by the IHO or SRO had actually been articulated in the parent's complaint. Therefore, on appeal, the parents had the right to a ruling on the merits of these claims. However, where the parent has failed to raise claims in the complaint, the parent has waived these claims. Consequently, while unaddressed claims may be revived, new claims may not be considered by the IHO, SRO or courts.

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5. Student's Progress in Unilateral Placement Demonstrates Ability to Progress In Less Restrictive Environment.

C.L. v. Scarsdale Union Free School District, 2012 WL 6646958 (S.D.N.Y., 2012)

SALIENT FACTS:

The parents appealed the SRO's decision, which affirmed an IHO's decision that although the district denied FAPE when it failed to develop an IEP, tuition reimbursement was denied because the private school was inappropriate. While

the student was enrolled in the District, he was provided with accommodations and modifications under Section 504. For 2008-09, the student was parentally placed in the Eagle Hill School ("Eagle Hill") located in Greenwich, Connecticut. During the Summer of 2009, the parents referred the student to the CSE. Without conducting the initial evaluations, the CSE convened to review the results of the student's educational testing and a letter from the student's Eagle Hill advisor. The District found the student ineligible and informed the parents that because the student was parentally placed out-of-district, the DOL (i.e. Greenwich), not the DOR (i.e. Scarsdale), was obligated to evaluate the student. The parents maintained the student's placement at Eagle Hill for 2009-10 and sought tuition reimbursement.

In relying on progress reports and report cards from Eagle Hill, the IHO concluded that the student could benefit from attending mainstream classes with modifications and accommodations. Additionally, the IHO held that given the student's academic and social progress, there was no need for specialized instruction. In affirming the IHO's decision, the SRO reasoned that the parents failed to establish that Eagle Hill provided the student with education instruction specially designed to meet his unique needs. The SRO concluded that the parents failed to demonstrate how the supports received at Eagle Hill were specially designed rather than being educational amenities that all parents would prefer for their children.

COURT'S DECISION:

Because the district did not contest the IHO or SRO's decision that it denied FAPE, the only issue on appeal was whether Eagle Hill was appropriate.

The court agreed with the SRO that many aspects of Eagle Hill (e.g. small class sizes of 10 students and enhanced access to teachers) were "the kind of advantages that might be preferred by parents of any child, disabled or not." However, there was little evidence to support the parents' position that the student could not have made adequate progress in an in-district school or a less restrictive private school. Because the student received limited counseling for his anxiety needs at Eagle Hill, which was supplemented by outside counseling, the court concluded that this factor evidenced that Eagle Hill was not tailored to meet the student's special anxiety needs. The court found persuasive that, although Eagle Hill reports discussed at length the student's behavior, personality, strengths and weaknesses, they did not indicate how Eagle Hill services were tailored to meet these needs.

Next, the court considered the restrictiveness of Eagle Hill. The court agreed with the SRO that the fact that some of the student's scores were above average and/or above grade level in the years the student attended Eagle Hill signified that he could have made progress in a less restrictive and more mainstream setting. The court reasoned that this distinction was important

because "any student disabled or not would make progress in a small, nurturing environment with a tailored curriculum."

Because the court concluded that the SRO's decision was thorough, the SRO appeared to have considered all of the evidence submitted by the parties; and he set forth his decision in a well-reasoned detailed opinion, the court deferred to the SRO's decision to deny tuition reimbursement.

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*This publication is intended to provide general information and is not meant to be relied upon as legal advice. If you have questions about anything discussed we urge you to contact your school attorney.

