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Read All About It!

A Monthly Synopsis of Salient Cases in Special Education

In this installment of the Attorney's Corner, we review an important Second Circuit decision indicating that public school districts must develop individualized education programs ("IEPs") for students who are parentally placed at private schools regardless of where they are located. Failing to offer a free appropriate public education ("FAPE") IEP as though the student would attend an in-District program will leave the District vulnerable to a ruling that it violated IDEA. We also review several District Court decisions. Two decisions provided procedural guidance for cases where the Parent alleges that the District will not be able to implement the IEP as written. Two other District Court decisions dismissed the Parents' complaints when they failed to exhaust their administrative remedies under IDEA before bringing an action alleging a FAPE denial in Federal Court. We close with two Office of State Review ("SRO") decisions, including one that held a District provided FAPE when it adequately addressed a student's environmental needs by providing home instruction and adequate special education accommodations.

Second Circuit Court of Appeals

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1. District Of Residence Required To Develop A FAPE IEP Even Though Student Parentally Placed In Private School Outside Of District Boundaries.

Doe v. East Lyme Board of Educ., 2015 WL 3916265 (2d. Cir. 2015)

SALIENT FACTS:

A nine-year-old student with autism received special education services from his home school District beginning in kindergarten. When he was eight years old during the 2008-09 school year, his Parent enrolled him in a private religious school due to concerns about his lack of academic progress. The District recommended an individualized education program ("IEP") that provided that the student would be educated at the private school at parent expense and the district would provide related services, including intensive reading, speech/language therapy and occupational/physical therapy.

The District developed an IEP for the 2009-10 school year that included an in-District general education classroom with related services. The Parent disagreed with the District's recommendations and continued the student at the private religious school. She also requested a continuation of the related services provided by the 2008-09 IEP, but the District refused, arguing that the student was not the District's responsibility because he was not enrolled in the District and did not attend a private school within the District. The District again refused to provide related services or develop an IEP for the 2010-11 school year. During both the 2009-10 and 2010-11 school years, the Parent arranged and paid for some of the student's related services.

The Parent requested a due process hearing in September 2010 and requested reimbursement for the related services she paid for and compensatory education for the related services contained in the 2008-09 IEP that she was unable to provide. The hearing officer found that the district offered FAPE and the private school was inappropriate because it did not provide special education services. On appeal, the United States District Court for the District of Connecticut ruled that the District provided FAPE for the 2009-10 school year. Further, although there was a FAPE denial for 2010-11 due to the District's failure to provide an IEP, the Parent was not entitled to reimbursement because the unilateral placement was not appropriate. However, the court found that the District should have continued to provide related services in 2009-10 as this was the student's pendency (i.e., last agreed-upon) placement. As such, the District was ordered to reimburse the Parent for the related services for which she paid. The Parent was not awarded compensatory education for related services that she was unable to provide due to financial constraints.

COURT'S DECISION:

Both parties appealed to the Second Circuit. The Court found that the District offered FAPE during the 2009-10 school year. The Parent was given the opportunity to meaningfully participate in the IEP meeting and the resulting IEP was appropriate. However, the Court found that the District violated FAPE for

failing to develop an IEP for the student for the 2010-11 school year. The student was a District resident and the District "therefore violated IDEA by failing to offer [an] IEP…and this violation deprived the student of FAPE." Further, the Court stated that a District's "duty to provide FAPE is not ended by enrollment of a resident child in a private school outside the district." The District of location ("DOL") for the private school continues to have child find responsibilities. However, this does not relieve the District of residence's ("DOR") responsibilities as it continues to have "the duty to offer FAPE," and this cannot be provided "unless an IEP is issued." As such, the DOR is vulnerable to a claim for tuition reimbursement and the cost of related services if it failed to develop a FAPE IEP.

The Court agreed that the private school was not appropriate, as it did not provide appropriate special education services to the student. Thus, the parent was not entitled to tuition reimbursement.

The Court determined that the last agreed-upon IEP was the 2008-09 IEP, which provided that the District would pay for and supply the student's related services. During that school year, the IEP indicated that the student would attend the private unilateral placement at Parent expense while the District would provide the related services. The Parent repeatedly requested pendency services from the District, and was denied. The Court disagreed with the district court's ruling that the Parent was only entitled to be reimbursed for services she actually paid for, rather than the full amount of services that were provided by the 2008-09 IEP. Specifically, the Court held that limiting reimbursement would provide an incentive for school districts to refuse to provide pendency services, as they would only be responsible for whatever was actually provided by the Parent. This is contrary to the purpose of pendency. As such, the Court allowed for reimbursement for actual services paid for by the Parent and compensatory education equivalent to the remaining services from the 2008-09 IEP that the Parent did not provide. Although compensatory education is typically provided only for substantive FAPE claims, the Court held that,

> When an educational agency has violated the stay-put provision, compensatory education may – and generally should – be awarded to make up for any appreciable difference between the full value of stay-put services owed and the reimbursable services the parent actually obtained.

The Court remanded the issue of compensatory education calculations to the district court, but stated that it should be based on the full amount of related services provided by the 2008-09 IEP.

WHY YOU SHOULD CARE:

This case provides clear guidance from the Second Circuit regarding a DOR's responsibilities when a student is unilaterally placed in a private school

outside of the district's boundaries. In such situations, the DOR must convene the Committee on Special Education ("CSE") and develop a FAPE as though the student would attend the District's recommended program. The DOR does not have to actually provide the special education services to a private school student who attends school outside of the district's boundaries. Rather, the DOR has to offer an IEP that provides FAPE. If the Parent makes a specific request, the DOL has an obligation to develop an individualized education services program ("IESP") for private school students who attend school within its boundaries.

DORs should convene CSE meetings for all students residing within their boundaries who require special education services, regardless of where the student's unilateral private school placement is located. The DOR should develop an IEP that recommends a special education program the student would receive should the parents elect to accept the program.

Federal District Courts

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1. A Parent's Rejection Of District's Proposed Program Is Not Speculative When Justified Due To Inappropriate Class and School.

S.B. v. New York City Dept. of Educ., 2015 WL 3919116 (SDNY, 2015)

SALIENT FACTS:

A 13 year old student was eligible for special education services due to auditory processing and speech and language disorders. In May 2012, the District's CSE recommended a 15:1 in-District special class with related services (i.e., speech/language therapy) and program modifications for the 2012-13 school year. The Parent indicated that the proposed special education program was not appropriate and her request for additional services, including transition services, was denied. The Parent was also not present when the CSE chair developed IEP goals based on her notes from the meeting.

The District did not mail the IEP and final notice of placement to the Parent until the end of August 2012. The Parent requested the opportunity to observe the proposed classroom, but claimed that she could not visit before the start of school because she received the IEP so close to the start of the school year. After visiting the program, the Parent informed the District of her decision to continue the student at Cooke Academy ("Cooke"), a private school that is not approved by the New York State Education Department ("SED"), because the District's proposed program was not restrictive enough for the student. The Parent requested a due process hearing in October 2012, alleging a variety of procedural and substantive violations.

The impartial hearing officer ("IHO") found that the District denied FAPE, as the proposed IEP was both procedurally and substantively inadequate. The IHO found that the District committed a procedural violation by failing to have the Parent present when developing the goals after the meeting; however, this did not rise to a FAPE denial. FAPE was denied due to inappropriate and immeasurable goals, a placement recommendation that was not restrictive enough, and the CSE's failure to discuss the Parent's request for transition services. The IHO also found that Cooke was appropriate and that the equities favored the Parent.

The SRO reversed a majority of the IHO's decision. Specifically, the SRO held that the goals were appropriate and measureable, the recommended classroom would have appropriately met the student's needs in the least restrictive environment ("LRE"), and the Parent's arguments about the recommended placement were speculative, because the student never actually attended the District's program. The SRO did not offer a decision about the development of goals after the CSE meeting without the Parent present.

COURT'S DECISION:

The Parent appealed to the District Court. The District Court agreed with the IHO's decision that the development of IEP goals without the Parent present was a procedural violation that did not result in a denial of FAPE. The Court also held that the Parent's delay in visiting the proposed school was justified due to the District's delay in providing the IEP and notice of placement. Further, the Parent's rejection of the proposed program was not speculative. This is because she visited the school one week after the start of the school year and she would have been able to withdraw her child from Cooke within this timeframe. The District Court agreed with the Parent that the proposed class was not appropriate for the student because the students functioned at a higher academic level than her child. The Parent was also justified in her decision because she relied on information provided by the proposed school's assistant principal, who informed the Parent that the special education program was "oversubscribed," and that the school did not have appropriate resources for their students. The District Court deferred to the IHO's opinion regarding the appropriateness of Cooke and the balance of the equities, and awarded tuition reimbursement to the Parent.

WHY YOU SHOULD CARE:

A District must develop an appropriate IEP in order to prevail when a Parent alleges a denial of FAPE. Although a CSE must propose a placement in the LRE, it must also ensure that the placement is appropriate, is grouped with students with similar needs and abilities, and will allow the student to make meaningful educational progress. Further, a District leaves itself vulnerable to a claim of FAPE denial when one of its representatives indicates to the Parent that the recommended program is inappropriate. A District must ensure that it provides the proposed IEP to the Parent in sufficient time for the Parent to

evaluate the program and determine whether he or she will accept it or pursue appropriate placement elsewhere.

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2. Parent Must Provide Evidence Of School's Inability To Implement IEP To Prevail In Speculation Case.

S.E. v. New York City Dept. of Educ., 2015 WL 4092386 (SDNY 2015)

SALIENT FACTS:

A nine-year-old student with autism attended the Seton Foundation for Learning ("Seton"), an SED-approved nonpublic school. In May 2013, the District's CSE convened to develop the student's 2013-14 IEP. The CSE recommended a 6:1:1 special class with related services in one of the District's self-contained specialized schools.

The Parent visited the proposed school in June 2013 and was given a tour with the assistant principal and site supervisor. The Parent claimed that the assistant principal advised her that the student would not be able to receive all of her related services during the school day. As such, the Parent would be responsible for transporting and arranging the student's related services after school at District expense. The assistant principal testified that she informed the Parent that she could reject the option of receiving related services after the school day, and that the student would then receive all of her related services during the school day. The Parent also indicated her concern that the student would not be provided with opportunities to be educated with typically developing peers at the proposed school. The Parent claimed that the assistant principal said that the proposed school was not appropriate for the student and that the District had other programs that would be more appropriate. The assistant principal testified that she had no recollection of making this statement, but that it was possible she would have mentioned other programs if the Parent indicated concerns about the proposed placement.

As a result of the Parent's concerns regarding the proposed placement, she unilaterally enrolled the student at Seton. The Parent requested a due process hearing, alleging that the District denied FAPE. The Parent did not allege that the IEP was inappropriate; rather, she argued that the proposed school would not adequately meet the student's needs. At the hearing, the District brought the assistant principal as its only witness. The IHO found that the District offered FAPE because it "demonstrated that it had available a seat in a self-contained class in a self-contained school that could deliver the program as described in [the student's] IEP."

The SRO agreed with the IHO's conclusion. He found that the District failed to provide a program in the LRE, but that this did not rise to a FAPE denial. The Parent's argument was found to be speculative because the student never actually attended the program and "a retrospective analysis of how the district would have executed the student's…IEP at the assigned public school site is not an appropriate inquiry."

COURT'S DECISION:

On appeal, the Parent argued that the District would not be able to adequately implement the proposed IEP because the student would have to receive some of his related services off-site. She alleged further that the assigned site was not an appropriate setting, and the IEP did not provide the LRE, because the student would not have any mainstreaming opportunities. The Court gave deference to the IHO and SRO decisions, as they were in agreement and well-reasoned. The Court also dismissed the Parent's concerns regarding the assistant principal's information about the placement, reasoning that there is no legal requirement for a District to provide the best possible education for a student. The Parent's argument that the student required an inclusive setting was also rejected as the IEP did not specify that any mainstreaming was required. As such, the Court determined that the District provided FAPE.

WHY YOU SHOULD CARE:

This case reiterates the importance of developing a bulletproof IEP that meets the student's needs and offers a program in a school that will be able to implement the IEP. A Parent's burden is more difficult when he or she makes a speculative argument that although the IEP is appropriate, the District will not be able to adequately implement the IEP to fidelity. In such situations, the District must provide evidence that it will be able to fully implement the proposed IEP. It is also important that District representatives who discuss the proposed program with the Parent are fully informed about the student's IEP and the recommended District program. District representatives should not make statements regarding the adequacy of a proposed program outside of the CSE setting. Further, a District has no requirement to offer the best possible special education program for a student. Instead, a District must offer an appropriate program that is reasonably calculated to allow the student to make educational progress.

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3. Parent Must Exhaust Administrative Remedies Under IDEA Before Bringing Federal Court Action Alleging Insufficient Special Educational System.

O.M. ex rel. D.M. v. Board of Educ. of the Wayne Cent. School Dist. 2015 WL 3952601 (WDNY 2015)

SALIENT FACTS:

A 19-year-old student who was in twelfth grade was classified with Multiple Disabilities due to autism and Down's Syndrome diagnoses. He was alternately assessed and educated in the District's "SHOW" program, which included instruction in life skills and career readiness. The Parents believed that the student's IEP did not include an academic component that would allow the student to develop his academic skills or have exposure to the general education curriculum. The Parents alleged that the student's transition services "remained vague and not tailored to his individualized needs."

The Parents brought a Complaint to federal court, alleging that the District failed to implement the IEPs of all students who attended the SHOW program, although those students were not named as parties in the current action. The Parents also requested that the District be directed to "develop a plan designed to remedy the…violations" and to "establish and implement policies and procedures…necessary to comply with federal and state law." The Parents sought compensatory education services and reimbursement for educational expenses.

The District moved to dismiss the Complaint, arguing that the Court lacked subject matter jurisdiction because the Parents did not exhaust their administrative remedies under IDEA. The Parents argued that the exhaustion process would be futile "in addressing the systematic deficiencies in [the District's] special education system." They alleged that the SHOW program was "deficient as a whole," and not just as it related to their child's IEP.

COURT'S DECISION:

The Court discussed the three exceptions to IDEA's exhaustion requirement, including (1) that it would be futile to pursue a due process hearing; (2) "an agency has adopted a policy or…practice of general applicability that is contrary to the law; or (3) equitable relief likely cannot be provided through administrative remedies. The Court considered this case under the futility exception because the Parents alleged systemic violations of law.

The Court found that although the Parents alleged systematic violations based on other students in the SHOW program, the Complaint was clearly on behalf of their son and was not a class action. Further, the Parents' argument lacked merit because they "made only generalized assertions concerning the lack of [IEP] implementation." The Parents also stated that the IEP was inadequate because it did not have an appropriate transition plan. As such, the futility exception did not apply because the Parents did not demonstrate that their "claims involve only a failure to implement services set forth in the IEP." As such, the Court granted the District's motion to dismiss for lack of subject matter jurisdiction.

WHY YOU SHOULD CARE:

A Parent must bring a FAPE denial claim to the impartial hearing process before pursuing it in federal court, unless one of the exceptions applies. A Parent cannot allege that a District's entire program is inappropriate when their claim only relates to the Parent's child and not on behalf of other students in the program. Further, alleging a systematic violation without bringing other students into the claim will preclude a Parent's claim of futility when attempting to bypass the administrative remedies under IDEA. Rather, a Parent who is dissatisfied with his or her child's IEP or the implementation of that IEP must exhaust all administrative remedies under IDEA before bringing the action to federal court.

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4. Parent Must Exhaust Administrative Remedies Under IDEA Before Bringing Federal Claim For Alleged Disability Discrimination.

G.M. v. Massapequa Union Free School Dist. 2015 WL 4069201 (EDNY 2015)

SALIENT FACTS:

A 13-year-old boy was diagnosed with attention-deficit/hyperactivity disorder ("ADHD") that manifested as fidgeting, tics and difficulty with keeping up with his schoolwork. The Parents brought a complaint against the District and several members of the District's staff, alleging that they did not appropriately manage the student's disability. First, the Parents alleged that the student's fourth grade teacher inappropriately disciplined the student for "Actions that were the uncontrollable byproduct of his disability." The teacher frequently separated the student from the class and had him sit in a back room in the classroom. The room had a window, but the student was unable to participate in class while seated there. The student was allegedly sent to this room at least multiple times per week and sometimes daily. The Parents claimed that they informed the school principal, psychologist, superintendent, and board of education about the disciplinary issues, but they allegedly did nothing to address this.

The student was elected to student council the following school year. District staff members then removed the student from the council as a "disciplinary measure." The Parents' complaint did not indicate who implemented the disciplinary action or what the student did to warrant the punishment.

The Parents alleged further that the following school year, the student repeatedly received detention "for problems associated with his disability." The Parents also requested that the District provide adult supervision to prevent bullying of the student. The Parents claimed that the student continued to be

verbally and physically bullied when the District refused to provide such supervision. The Parents also indicated that none of the alleged bullies were appropriately disciplined for their conduct.

The Parents brought a number of actions against both the District and the District staff members who were involved in her child's education. Specifically, the Parents alleged disability discrimination under New York State Human Rights Law ("NYSHRL") and the Americans with Disabilities Act ("ADA"); Section 1983 claims for unlawful seizure under the Fourth Amendment; a denial of due process and equal protection; negligent hiring; negligence per se; and negligent infliction of emotional distress.

COURT'S DECISION:

The Court held that the Parents' claims were "inextricably intertwined" with the student's right to FAPE. All of the Parents' discrimination claims, including that their child was inappropriately punished and excluded due to his disability, were also linked to FAPE. This is because the Parents claimed that the student's education was disrupted due to his disability. It was inconsequential that the student did not have an IEP. As such, the Parents needed to exhaust her administrative remedies under IDEA before bringing federal claims under the ADA and Section 1983, as none of the claims were "entirely beyond the bounds of the IDEA's educational scheme." As such, the Court dismissed the federal claims.

As the Eastern District is a federal court, it elected not to exercise supplemental jurisdiction over the state claims after dismissing the federal claims. As such, the state claims were dismissed without prejudice.

WHY YOU SHOULD CARE:

A Parent must exhaust administrative remedies provided under IDEA before bringing a disability discrimination claim in federal court. This means that the Parent must avail himself or herself of the IDEA due process hearing procedure unless he or she can demonstrate that such efforts would be futile. Such claims must go through a due process hearing even if a student is not classified for special education purposes, as such an allegation would be for a denial of FAPE and/or the failure to meet a District's Child Find obligations. This is because IDEA includes all federal claims related to disabilities and education, including those falling under the ADA and Section 1983.

Office of State Review

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1. District Adequately Addressed Student's Environmental Needs When Providing Home Instruction And Appropriate Accommodations And Modifications.

***Application of a Student with a Disability*, Appeal No. 14-006 (2015)[1]**

SALIENT FACTS:

The Parent referred the student to the CSE in January 2012. The CSE convened in March 2012 and found the student to be eligible for special education services as a student with an other health impairment. The District placed the student on home instruction after being provided with a note from the student's physician indicating the student's intolerance to high pollen counts. The CSE convened in April 2012 to develop an IEP for the 2012-13 school year. This included a recommended placement in a 15:1 special class for one period per day and a number of program accommodations, including preferential seating, breaks as needed, additional time to complete assignments, copy of class notes, access to water, being allowed to chew gum in class, and unrestricted use of the bathroom. The student was also provided with a health plan that included a provision for making up missed time.

The student was unable to attend class at the beginning of the 2012-13 school year. The CSE convened in September 2012 and determined that 14 hours per week of 1:1 home instruction would be added to the student's IEP in addition to the 15:1 special class for one period per day. Four hours of daily individual skilled nursing services were also included on the student's IEP. The student did not attend school for the remainder of the 2012-13 school year, but participated in extracurricular activities. The District also installed a "telepresence" at the school so the student could "access her classes from a remote location."

The CSE convened in May 2013 to develop an IEP for the 2013-14 school year. The CSE recommended a 15:1 special class, home instruction and skilled nursing. The IEP also provided assistive technology to continue the remote access of the student's classes in the event she was unable to attend school. The student also received extended school year services to make up for schoolwork missed during the 2012-13 school year.

The Parent requested a due process hearing in March 2013, alleging that the District failed to offer FAPE during the 2012-13 school year. The Parent alleged that the goals were inappropriate, the IEP did not address the student's social-emotional needs, and the Parent was not able to meaningfully participate in the CSE meeting. The Parent also stated that the District did not allow the student to physically come to school, as it did not provide her with "a healthy environment in which she can learn and participate." As such, the home instruction placement isolated the student from her peers. Other allegations included an unreasonable delay in providing home instruction and inappropriate technology to allow the student to remotely access her classes. The Parent also argued that the District should have enforced a "fragrance free policy" to accommodate the student's

[1] This case was proudly argued by Frazer & Feldman, LLP.

medical condition. The Complaint also alleged that the District did not adequately address allegations of bullying of the student.

The Parent filed another request for due process in June 2013, alleging that the District failed to offer FAPE for the 2013-14 school year. This Complaint was similar to Complaint filed for the 2012-13 school year. The Parent requested reimbursement for private tutoring for both the 2012-13 and 2013-14 school years.

The IHO found that the District provided FAPE and took adequate steps to assist the student to return to school, including "environmental testing and banning certain chemicals identified as irritants by the student's parents." The IHO also stated that the Parents did not provide an adequate description of specific environmental triggers for the student to assist the District with identifying which fragrances should be banned. Further, it was held that the "District made good faith, even extraordinary, efforts to accommodate the student through the use of technology." The home instruction provided by the District was adequate and any missed home instruction was due to the student's personal schedule. The IHO also found that the District followed appropriate procedures to address any allegations of bullying.

SRO'S DECISION:

The SRO found that the District appropriately implemented the student's 2012-13 IEP. Further, the District educated the student in the LRE by arranging for home instruction when the student's medical condition prevented her from physically attending school. The Parents alleged that the District did not take adequate steps to allow the student to come to school, as it did not implement a fragrance free policy, or conduct adequate environmental testing. The SRO indicated that the law was unclear as to whether the district's obligation to "make reasonable efforts to accommodate the child in a regular classroom" extends to "district policies and procedures." Regardless, the SRO held that the District made reasonable efforts by conducting environmental testing and banning the specific fragrances the Parents indicated were harmful to the student. The Parents failed to offer proof to substantiate which fragrances were the cause of the student's problems. The District went above its duty when it took steps to research and implement technology that allowed the student to remotely access her classes. The District also adequately arranged for home instruction, and any delay was due to the Parents' rejection of several of the provided teachers and their scheduling difficulties.

The SRO found the claims regarding the 2013-14 school year to be speculative as the Complaint was filed in May 2013, before the start of the 2013-14 school year. The SRO also found that the IEP was procedurally and substantively adequate, that there was no indication that the IEP would not have been implemented as written, and that the Parents had the opportunity to fully participate in the IEP development process.

WHY YOU SHOULD CARE:

This case provides an example of how Districts cannot anticipate the unique needs of all of the students they will encounter. However, it does indicate the importance of developing an individualized special education program designed to address a student's unique needs. In this case, both the IHO and the SRO found that the District went above and beyond what would typically be required to provide FAPE. However, strong special education services and program accommodations allowed it to prevail in this appeal. Although a District does not need to address all of a Parent's concerns when developing a student's IEP, it does need to consider the Parent's input and develop an IEP that provides FAPE in the LRE. Here, the District adopted a policy banning the specific fragrances identified by the treating physician, conducted air quality testing, provided an IEP that addressed both in-school and home instruction needs, invested in a remote telepresence and provided the student with the technology to participate from her home. The District may never have another student whose needs rise to this level, but they treated this child individually and designed a program to meet her needs.

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7. Student Not In Need of Different Specialized Reading Program When It Is Similar To Program Already Used By District.

***Application of a Student with a Disability*, Appeal No. 14-048 (2014)**

SALIENT FACTS:

A student's 2012-13 IEP was developed when the CSE convened in September 2012. His 2013-14 IEP was developed during CSE meetings in September and October 2013. The Parent alleged that the District failed to offer FAPE for both the 2012-13 and 2013-14 school years. Specifically, the Parent argued that the District should have provided additional special education teacher support services ("SETSS") and speech/language therapy and requested reimbursement for Orton-Gillingham reading services that she provided for the student. The Parent also requested extended school year services ("ESY").

At the due process hearing, the IHO found that the discrepancies in the student's standardized achievement scores made it impossible to adequately determine the student's needs in reading and math. Specifically, the student's special education teacher reported significant progress in reading. In contrast, the neuropsychological evaluation obtained by the Parents reported that the student made "very little progress and needed a different approach."

The IHO also found that the Parent did not establish that the student required the additional reading services in order to make meaningful educational

progress. This is because the District was already supplying a Wilson reading program, and the IHO found Wilson and Orton-Gillingham to be "fundamentally the same program." The IHO also found that the student was not eligible for extended school year services because there was no evidence of regression. However, the IHO ordered the District to conduct an "educational evaluation, considering all the prior testing by the neuropsychologist and teachers within 30 days," and to reconvene the CSE after the evaluation was completed.

SRO'S DECISION:

The Parent alleged that the IHO was biased and "demonstrated a lack of knowledge of special education, the public school system, and what related services addressed." The SRO disagreed and found that the IHO was not biased. The SRO also found that the IHO's decision was well-reasoned and that the Parent's request was "properly denied." The Parent did not supply evidence indicating that the student required Orton-Gillingham instead of Wilson, additional speech/language therapy, or an extended school year program. As such, the SRO upheld the IHO's decision.

WHY YOU SHOULD CARE:

Parents frequently disagree with the teaching methodologies utilized by school districts and the amount of services offered on a student's IEP. However, a Parent must demonstrate that a student is not able to make meaningful educational progress without those additional services or specialized interventions. A reviewing authority is likely to rule in favor of the District when a Parent requests a program that is similar to one already being utilized by the District, such as the similarities between the Orton-Gillingham and Wilson reading programs. Similarly, a Parent will need to present actual evidence regarding a student's need for services, rather than just offering conjecture. In such situations, Districts should also have evidence demonstrating a student's progress (e.g., data from IEP goals, progress monitoring, etc.) to support the notion that it is meeting a student's needs. Districts should also conduct regression testing for all students when they return to school in September and before and after extended school breaks to support the decision regarding ESY services.

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