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MONTHS IN REVIEW: September 2015

Read All About It!

A Monthly Synopsis of Salient Cases in Special Education

In this installment of the Attorney's Corner, we review several District Court decisions. One decision found that the School District did not offer a free appropriate public education ("FAPE") when it did not consider the Parents' concerns regarding the student's placement after the Committee on Special Education ("CSE") made its recommendation. The Court determined that this prevented the Parents from being able to meaningfully participate in the CSE process. Another case modified the amount of attorneys' fees awarded to the Parents when they prevailed on only part of their case and the Court ruled in favor of the School District on the remaining issues. Another case denied tuition reimbursement when Parents could not demonstrate that their unilateral placement appropriately addressed their child's special education needs. We also review a case in which four Parents joined together in District Court and requested attorneys' fees and a court order directing the SRO to issue decisions in a timely matter. The Parents in another case alleged that the School District did not adequately address the harassment and bullying of their child, and that this led to the student's tragic suicide. All of their actions were dismissed because they did not properly assert the facts in their claim. The last District Court case denied tuition reimbursement to the Parents when their only argument was that the School District would not appropriately implement their child's individualized education program ("IEP"). We conclude with an Office of State Review ("SRO") decision that would have examined a student's pendency rights, but was dismissed because the District did not comply with the State's procedural requirements for bringing an appeal.

Federal District Courts

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I. District Denied FAPE Where Parents Were Not Meaningful Participants And Recommended School Was Inappropriate.

F.B. v. New York City Dept. of Educ., 2015 WL 5564446 (SDNY, 2015

SALIENT FACTS:

A student with autism began to attend the Rebecca School ("Rebecca"), a private school that is not approved by the New York State Education Department ("SED"), when he was five years old in September 2008. Rebecca specializes in working with children with neurodevelopmental disorders. The Parents and District entered into a settlement agreement for tuition reimbursement to Rebecca for the 2008-09, 2009-10, 2011-12, 2012-13, and 2013-14 school years. The current case involved a dispute between the parties regarding tuition reimbursement for the 2010-11 school year.

The District convened a CSE meeting in February 2010 to develop an IEP for the 2010-11 school year. The CSE recommended a 12-month program in a 6:1:1 special class with related services. The IEP also provided for accommodations for the student's sensory needs, including sensory breaks and a pressure vest. After the meeting, the District provided the Parents with a "Notice of Recommended Deferred Placement," indicating that an in-District placement would not be selected for the student until June 2010. The Parents were asked to return the form indicating whether they agreed with the IEP recommendations and whether they agreed with the recommendation to defer the placement.

The Parents provided the District with a letter indicating that they agreed with the 12-month school year, but "at present time," could "neither agree nor disagree with the [District's] other recommendations…because we need more information to allow us to make an informed decision." The Parents requested additional information, but the District did not respond. On June 15, 2010, the Parents informed the District of their intent to continue the student at Rebecca. The Parents were informed of the student's in-District placement on June 22, 2010. They requested an appointment to discuss the placement with school officials, but did not receive a response. The Parents toured the in-District school in July and then informed the District of their concerns regarding the proposed placement. In particular, the Parents questioned whether the school could employ the appropriate teaching methodology and related services or address the student's sensory and processing needs.

The Parents requested an impartial hearing on a number of procedural and substantive grounds. The impartial hearing officer ("IHO") found that the District failed to offer FAPE because the CSE did not base its decision on "sufficient evaluative data," it did not conduct a functional behavioral assessment ("FBA") or develop a behavior intervention plan ("BIP") and it did not offer parent counseling and training. The District was ordered to reimburse tuition.

On appeal, the SRO reversed the IHO's decision, and found that the District offered FAPE. The Parents appealed the decision before the District Court in November, 2011. At the time, the Court agreed with the SRO's decision, but remanded the case back to the SRO to rule on other challenges raised by the Parents regarding the student's IEP. The SRO again ruled in favor of the District when it reconsidered the case in February 2014.

COURT'S DECISION:

On appeal, the Parents claimed that (1) The District engaged in predetermination; (2) the Parents were not able to meaningfully participate in the CSE meeting; (3) the IEP did not have appropriate transitional support to assist the student with attending the District program; and (4) the proposed placement would not have been able to appropriately implement the student's IEP.

The Court determined that the District denied FAPE and reversed the SRO's decision. The Court agreed with the SRO's determination that the District did not engage in predetermination, as the CSE was within its right to develop a draft IEP before the meeting, provided that "the CSE understands that changes may occur at the CSE meeting." There was evidence that the IEP was changed as a result of the Parents participation. However, the Court ruled that the Parents were denied the right to be meaningful participants at the CSE meeting. The District failed to respond to the Parents' requests for additional information and failed to schedule the Parents' visit to the proposed school until after the school year was over. The Court stated meaningful participation means that the Parents participate in both the CSE meeting and in the "broader school-selection process." The District's failure to allow the Parents to meaningfully participate denied the student FAPE because it "significantly impeded the Parents' opportunity to participate in the decision-making process."

The Court also considered the Parents' substantive complaints. It found that the Parents waived their right to complain about the failure to address student's sensory needs, as they were not included in the original due process complaint. The Court also gave deference to the SRO on the issue of whether the IEP appropriately addressed the students' transition needs. This is because the IEP included "a number of services and accommodations" in a "highly structured" program that would address the student's needs. In addition, the law also does not require that a plan to transition from one program to another be part of a student's IEP. However, the Court agreed with the Parents' argument that the

District would not be able to adequately implement the student's IEP. This was based on testimony from the teacher in the District's proposed class, who indicated that she did not understand the student's IEP goals and would not have been able to implement them, as they were based on the DIR model that she did not use in her classroom. Further, the student required a number of related services that the District would not be able to schedule, as the therapists were only available two days per week at the program. This would have resulted in the student receiving the same therapy twice in one day, rather than daily. The Court also found that the school would not be an appropriate environment for the student, as it was attended by too many other students without disabilities. The Court considered the student's sensory needs and held that the recommended school would be too loud for the student.

The Court ruled that the District denied FAPE. It also found that Rebecca was an appropriate placement and that the equities favored the Parents. As such, the Parents were awarded tuition reimbursement.

WHY YOU SHOULD CARE:

The District lost this appeal on both procedural and substantive grounds. The Court considered all of these issues in determining a FAPE denial. School districts must ensure that Parents have the opportunity to be active members of the CSE. This includes responding to Parent requests for further information in a timely and effective manner. The Court found merit in the Parents' speculation that the District would not be able to appropriately implement the student's IEP. You may remember that a recent Second Court decision held that Parents will not prevail in FAPE denial claims when arguing that a District could not adequately implement an otherwise appropriate IEP.[1] The Court here cited the M.O. decision, but stated that it allows parents to prevail in such situations when there is evidence indicating that the proposed placement will not have the "*capacity* to implement a child's IEP." Under M.O., the Court will not speculate whether an IEP can be implemented. However, if a recommended placement can't provide the program and services, a Court may find that an IEP is incapable of being implemented. Here, the Court found that it would be impossible for the proposed school to implement the IEP as written, and as such, determined that the District failed to offer FAPE.

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II. Partial Success Leads to Award of Only a Portion of Attorneys' Fees.

S.A. v. New York City Dept. of Educ., 2015 WL 5579690 (EDNY, 2015)

[1] See M.O. v. New York City Dept. of Educ., 2015 WL 4256024 (2d. Cir. 2015).

SALIENT FACTS:

The CSE recommended a 12-month in-District special education program for a student with severe autism, interfering behaviors and language difficulties. The IEP included parent counseling and training, but the Parents informed the District they would be unable to attend the scheduled times due to work and family commitments. Although the Parents rejected the placement, the student attended the recommended program during the 2010-11 school year. The Parents requested a due process hearing in July 2010, alleging that the District did not provide FAPE. They requested compensatory educational services for the 2009-10 school year and "prospective funding for private school tuition" for the 2010-11 school year. The Parents also requested 40 hours per week of 1:1 applied behavioral analysis ("ABA") therapy, the supervision of a Board Certified Behavior Analyst ('BCBA'), and additional related services.

The IHO found that the District failed to offer FAPE because it did not accommodate the Parents' schedule for parent counseling and training and there was insufficient evidence that the student's summer 2010 program was appropriate. However, the remaining IEP was appropriate. The IHO ordered the District to provide five hours per week of at-home training for 42 weeks. He also ordered the CSE to reconvene to determine compensatory services for the student to make-up for the loss of FAPE during the six-week summer session.

The Parents appealed the decision to the SRO and the District cross-appealed. The SRO disagreed with the IHO's partial award and determined that the District offered FAPE. As such, the Parents received no compensatory services.

The Parents appealed to District Court, which found that "the sole violation that rises to the level of denying the student a FAPE is the DOE's failure to provide the parents with appropriate counseling and training." The Court reinstated the IHO's decision and ordered 260 hours of parent counseling and training. The Court also determined that the Parents were "the prevailing parties solely with respect to the claim for compensatory parental training."

COURT'S DECISION:

The current matter was brought by the Parents to request attorney's fees and costs for the previous litigation. The Parents claimed attorney's fees amounting to over $170,000. The Court examined the documentation provided by the Parents, including their original agreement with their counsel and declarations from two other lawyers indicating the "reasonableness of the proposed hourly rates." The Court dismissed the other attorneys' declarations, finding them inapplicable to the Eastern District, (as one mainly practiced in the Southern District) and the other to lack merit, as it was from the attorney's client. It found that the Parents' attorney's requested fees "substantially deviated from prevailing hourly rates" for other similarly situated attorneys. The Court also considered the

nature of the case, and determined that it was similar to most cases that arise under the IDEA, and was "neither unusual nor complex."

The Court stated that the "degree of success is the most important factor in determining the reasonable fees to be awarded to a prevailing party." It determined that the Parents prevailed on only one claim out of ten asserted procedural and substantive violations. As such, the Parents were not entitled to the full amount of fees. Rather, the Court found that a reduction of 50% was appropriate, for a total of $68,802, and ordered the District to reimburse the Parents accordingly.

WHY YOU SHOULD CARE:

Parents are entitled to recover reasonable attorney's fees if they are the prevailing party. In situations such as the current case, it is sometimes difficult to determine which party actually prevailed. When Parents win a portion, but not all of their case, the district court has the discretion to determine the amount based on the lodestar method. This is done by "multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." Fees can be reduced if the amount "unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonable comparable skills, reputation, and experience."

Here, the Court found that the Parents' attorney fees were unreasonable and adjusted them accordingly. However, the District still had to pay a considerable amount even after the total fees were reduced. This demonstrates the liability faced by Districts when they do not appropriately implement a student's IEP. Students with autism must have parent counseling and training as part of their IEPs. Districts need to ensure that Parents are actually able to attend such trainings, and should make reasonable efforts to accommodate Parents' schedules when they have a conflict.

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III. Parents Not Entitled To Tuition Reimbursement In FAPE Denial Case When Unilateral Placement Is Inappropriate.

John M. v. Brentwood Union Free School Dist., 2015 WL 5695648 (EDNY 2015)

SALIENT FACTS:

A student attended an in-District general education program from kindergarten through the Fall of tenth grade during the 2008-2009 school year. The mother reported to the District that the student was being bullied and

harassed based on his race. District staff met with the student "three or four times" to assist him with feeling more comfortable in school. In November 2008, school officials met with the student's mother and recommended that the student be removed from school "for his safety" and be evaluated by a psychiatrist. The student received home instruction from the District in November and December. He was evaluated by a private psychiatrist and diagnosed with major depressive episode and paranoid episode. The psychiatrist recommended continued home instruction.

The District met with the Parents in January 2009 and asked that the student return to school in the same general education setting he attended before he began home instruction. The Parents refused and the District denied their request to send the student to a different school. The District continued to provide home instruction for the remainder of that year. In June, the Parents enrolled the student at St. John the Baptist ("SJB"), a private parochial school. The student was educated in a general education setting and received about 10 sessions with his guidance counselor during the following school year.

The Parents filed a due process complaint in January 2010, requesting both compensatory education and tuition reimbursement. The IHO awarded tuition reimbursement for the 2009-10 school year, stating that the District violated its Child Find obligations by failing to evaluate and classify the student for special education services. The IHO denied tuition reimbursement for 2010-11, as the request was premature. The SRO annulled the IHO's decision and sustained the District's appeal. The SRO held that although the District denied FAPE, the Parents did not demonstrate that SJB was an appropriate placement for the student.

The Parents filed another due process complaint in November 2010, alleging the same facts and requesting the same relief as the first complaint. The District moved to dismiss because the issues were already adjudicated. The IHO dismissed the complaint. The SRO upheld the IHO's decision regarding the 2009-10 school year, but allowed the Parents' claim for 2010-11 to move forward because no final decision was issued.

At the hearing for the 2010-11 school year, the IHO found that the District failed to offer FAPE and that St. John the Baptist was an appropriate placement. The District was ordered to reimburse tuition. On appeal, the SRO agreed that the District denied FAPE, but concluded that tuition reimbursement was not warranted because the Parents did not demonstrate that the unilateral placement met the student's needs as related to his disability.

COURT'S DECISION:

The Parents filed the current appeal and requested reimbursement for both the 2009-10 and 2010-11 school years. The Court deferred to the SRO, as his

"decisions are well-reasoned and his findings are well-grounded in the evidence." The student's private placement was not appropriate because SJB did not provide any special education services to address the student's needs. As such, "the parents did not meet their burden to demonstrate how the program provided at St. John's was specially designed to meet the student's unique needs." The Court disagreed with the Parents' argument that SJB was appropriate because it provided the student with a safe and supportive environment within the general education setting. Rather, the school was not appropriate because it was not "specifically designed to meet [the student's] unique needs as required for reimbursement under IDEA." As such, the Parents' request for tuition reimbursement was denied. Similarly, the Parents were not granted attorney's fees, because they were not the prevailing parties.

The Parents also brought claims under the Rehabilitation Act and Americans with Disabilities Act ("ADA") when filing this appeal. These claims were dismissed because they were not included in the initial administrative hearing and the Parents did not exhaust their administrative remedies.

WHY YOU SHOULD CARE:

In FAPE denial cases, courts apply the *Burlington/Carter* test to determine whether Parents are entitled to tuition reimbursement.[2] First, the District has the burden to demonstrate that it offered FAPE. If the District fails to meet this burden, the Parents must demonstrate that the unilateral placement is appropriate and the equities are in their favor when a FAPE denial is found. It is unusual for Parents to lose "prong 2" or "prong 3" in this test, and Parents are often granted tuition reimbursement. This case presents an example of a Parent who loses under "prong 2," specifically because the Parent did not demonstrate that SJB addressed the student's special education needs. It is not enough for Parents to present evidence indicating that the student had better social-emotional functioning in the unilateral placement; rather, Parents must also provide specific evidence indicating how the student's special education needs were addressed.

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IV. Parents Not Prevailing Parties When SRO Issues Decisions After Pressure From District Court.

K.C. v. New York City Dept. of Educ., 2015 WL 5784905 (SDNY, 2015)

SALIENT FACTS:

The Parents of four students with disabilities joined together to challenge the SED and current and former SROs. The Parents alleged that the SRO did not

[2] Sch. Comm. of Burlington v. Dep't. of Educ., 471 U.S. 359 (1985); Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 (1993).

decide appeals in a "timely fashion" and requested "declaratory and injunctive relief" and attorneys' fees. The current complaint was filed before the SRO issued his final decision in each of the Parents' IHO appeals. However, the SRO issued his decisions, three of which were unfavorable to the Parents, and one of which was favorable. The Parents then amended their complaints by requesting only attorneys' fees and costs and arguing that they were "prevailing parties."

The SRO is required to decide an appeal within 30 days under both state and federal regulations. The first case alleged a FAPE denial with a request for tuition reimbursement for the Rebecca school, a private school that is not SED-approved. The SRO was 228 days late in issuing a decision at the time the complaint was filed. The second case also involved a FAPE denial for a student who was unilaterally placed at Rebecca. The SRO's decision was 404 days past the deadline at the time of filing. The third case was based on an alleged FAPE denial and a violation of Child Find obligations for a student who was unilaterally enrolled at the Cooke Center for Learning. The SRO's decision was 215 days late at the time of filing. The fourth case was a FAPE denial claim for a student who was unilaterally placed at the New York Institute of Technology VIP Program. The SRO was 324 days late in issuing a decision.

The defendants moved to dismiss, arguing that because the decisions were now available, the issues were moot and that the Parents were not prevailing parties.

COURT'S DECISION:

The Court found that "the mere issuance of the SRO decisions does not demonstrate that plaintiffs are 'prevailing parties.'" Further:

> The term "prevailing party" does not authorize federal courts to award attorney's fees to a plaintiff who, by simply filing a nonfrivolous but nonetheless potentially meritless lawsuit...has reached the "sought-after destination" without obtaining any judicial relief.

The Court did not order the defendants to issue an SRO decision. Rather, at a pre-hearing conference, the Court told the defendants that it would likely issue a decision favorable to the Parents if decisions were not issued within a certain timeframe. The SRO issued the decisions within the Court's suggested time frame, but the Court determined these decisions to be a "voluntary change in conduct."

The Court also found the Parents' claims to be moot, because they did not demonstrate "that they have a reasonable expectation that they will again be subjected to a delay in the issuance of an SRO decision." As such, the Court ruled in favor of the defendants.

WHY YOU SHOULD CARE:

The recent SRO backlog was frustrating for both parents and school districts. Here, it appears that the SRO made final decisions in each of the four cases based on pressure from the court to meet a certain deadline. However, it is uncertain whether the Court would have ruled in favor of the Parents if the SRO had not issued his decisions. The Parents were not "prevailing parties" under IDEA, as the Court never issued a formal decision or a conditional order on the issue. The Parents who received favorable decisions from the SRO were also not prevailing parties for purposes of IDEA, although they will likely be entitled to attorneys' fees for prevailing on the issue of a FAPE denial.

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V. Parents Do Not Prevail On Federal And State Discrimination Charges When They Do Not Make Specific Factual Allegations.

Spring v. Allegany-Limestone Central School Dist., 2015 WL 5793600 (WDNY, 2015)

SALIENT FACTS:

A high school student with Tourette's Syndrome, attention-deficit/hyperactivity disorder ("ADHD'), and Callosum Dysgenesis, a malformation of the nerve fibers that connect the two hemispheres of the brain, tragically committed suicide in June 2013. The student's Parents brought an action under the ADA, Section 504 of the Rehabilitation Act, Section 1983, and New York Civil Rights and other state laws. They alleged that the District failed to properly address "numerous acts of fear and intimidation" that included allegations of severe bullying and harassment committed by other students against the student since middle school. The student physically acted out against some of his harassers and he was punished for this behavior. The district did not conduct a manifestation determination. The Parents alleged:

> Due to the Defendants' acts and omissions, including negligence, gross negligence, recklessness and/or deliberate indifference to disabilities, bullying, and discriminatory conduct against [the student], they caused him severe emotional distress, humiliation, embarrassment, and self-loathing, causing and/or contributing to his suicide.

The Parents named a number of defendants, including the school district, several District staff members and two students.

COURT'S DECISION:

The Court first considered the Parents' Constitutional claims. The Parents alleged that the Defendants violated the Fourteenth Amendment because they failed to protect the student in school and treated him disparately by disciplining him, but not other students, for similar actions. The Court noted that the Fourteenth Amendment does not require "the State to protect the life, liberty, and property of its citizens against invasion by private actors." There are two exceptions to this rule. The first is if the District has a special relationship with the alleged victim; the Court held that this does not apply when the alleged conduct is peer-on-peer. The second exception is when there is a state-created danger. This did not apply because the Parents did not name the specific individuals in the District who were responsible for failing to protect the student. As such, this claim was dismissed.

The Parents also brought an Equal Protection claim, arguing that the student was treated differently from his peers due to his disabilities. However, the Parents did not demonstrate that the District was "deliberately indifferent to discriminatory harassment" of the student. The Court found that the District's punishment of the student after physically acting out against others was "rationally related to his escalating conduct." Thus, Equal Protection claims were also dismissed.

The Parents alleged further that the District violated the First Amendment by retaliating against them after they reported the alleged bullying to school officials. The Court found that the Parents failed to name defendants individually, and instead named all of the defendants as a group. Therefore, they failed to properly state a First Amendment Claim. The Section 1983 and New York Constitutional claims were dismissed for the same reason.

The Court then considered the Parents' claims arising under the ADA and Rehabilitation Act. The Parents alleged that the defendants discriminated against their son by failing to take proper action and by retaliating against the Parents. The Court found that the Parents failed to demonstrate that the student's disabilities "interfered with major life activities" as required under both statutes. The Court also noted that, even though the student received special education services, he was not automatically a qualified individual with a disability under the ADA or Section 504. The Court dismissed the Parents' claims related to discrimination under these statutes. The retaliation claims were also dismissed, as the Parents did not demonstrate that they "engaged in a protected activity under the ADA or Rehabilitation Act."

The Court refused to consider the remaining state claims after dismissing all of the federal claims. It concluded by stating that it "does not take lightly the tragic loss of a young life which prompted the initiation of this action."

WHY YOU SHOULD CARE:

This is a sad case that was decided solely on procedural grounds. The Parents did not properly plead their case under any of the claims and failed to connect the facts of their case to the necessary elements for each cause of action. It is unclear whether the outcome would have been different if the Parents' counsel had properly pleaded the issues. However, the case also points to the potential liability faced by school districts when they fail to properly address student bullying and harassment. Districts should ensure that they comply with the Dignity for All Students Act ("DASA") when receiving reports of harassment by investigating, taking action and preventing future instances of such misconduct.

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VI. Parent Request For Tuition Reimbursement Denied Absent Evidence That District Would Be Unable To Implement The Student's IEP.

T.F. v. New York City Dept. of Educ., 2015 WL 5610769 (SDNY, 2015)

SALIENT FACTS:

A high school student with Down Syndrome was recommended for an in-District 12:1:1 placement with related services. The Parents rejected the placement and unilaterally enrolled the student at the Cooke Center, a private school that is not SED-approved. The following school year, the CSE convened to plan for the student's IEP for the upcoming school year. It again recommended a 12-month in-District program in a 12:1:1 special class with related services. The District informed the Parents of the recommended school in June. The Parents visited the school and then informed the District that they did not believe it was appropriate. The Parents visited the proposed school again in October of the following school year and again informed the District of their concerns.

The Parents requested a due process hearing, alleging that the District denied FAPE and requesting tuition reimbursement. The IHO found that the District provided FAPE and that Cooke was not an appropriate placement. On appeal, the SRO affirmed the IHO's decision and ruled that the District offered FAPE.

COURT 'S DECISION:

On appeal, the Parents alleged both procedural and substantive violations. The Court found that the District did not commit any procedural violations that denied FAPE. It held that the CSE had sufficient information to determine the student's present levels of abilities and needs when developing the IEP, and did

not need to conduct updated evaluations. It found that the Parents were afforded the opportunity to meaningfully participate in the CSE meeting, even though they did not agree with the CSE's recommendations.

The Court also ruled that the IEP was substantively adequate. The 12:1:1 class was appropriate to meet the student's needs based on the student's previous progress in a similar class. The IEP also included appropriate academic and transition goals. The proposed school placement was also appropriate, although the Court noted that the District should have responded to the Parents' concerns after visiting the school. However, this did not amount to a FAPE denial. Accordingly, the Court determined that the District offered FAPE and denied the Parents' request for tuition reimbursement.

WHY YOU SHOULD CARE:

This is a standard FAPE denial case. The Court deferred to the IHO and SRO's opinions in determining that the District offered FAPE. The Parents failed to offer evidence to indicate that the IEP was not appropriate. As such, they were prevented from speculating that the District would not be able to implement the student's special education program.

Office of State Review

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I. District's Appeal Dismissed When It Did Not Comply With The State's Procedural Requirements.

***Application of a School District*, Appeal No. 15-045 (2015)**

SALIENT FACTS:

The CSE developed a 2014-15 IEP for a student with autism in June 2014. It recommended an 8:1:1 special class in an in-District school with special education teacher support services ("SETSS") and related services. The Parent requested a due process hearing and also asked for a "Pendency Order" to continue the related services received during the summer of 2014.

The IHO issued an interim order on the pendency issue. The District argued that a November 2013 federal district court decision regarding the 2011-12 school year "terminated the student's pendency requirement." This argument was rejected by the IHO, who determined that a previously unappealed pendency order from October 2013 established the student's current pendency placement.

SRO'S DECISION:

The District appealed to the SRO, and argued that the previous October 2013 pendency order did not form the basis for the student's current pendency placement. Rather, the District argued that pendency should be based on a federal court decision from November 2013, which found in favor of the District.

The SRO did not consider the case on the merits. Rather, it dismissed the District's appeal because it did not comply with the procedural requirements of the State's regulations. The District did not properly serve the Parents and did not provide a reason for its delay in filing the appeal within the statutory timeframe.

WHY YOU SHOULD CARE:

The District did not appeal the October 2013 order, and this was the rationale used by the IHO in determining that it continued to establish the student's current pendency placement. However, the District prevailed in its appeal in federal court one month later. This case would have been an interesting one on the merits, and it is unfortunate that the District's procedural errors resulted in dismissal. The case points to the importance of complying with the State's requirements when requesting a due process hearing or an appeal.

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