THE YEAR IN REVIEW
SPECIAL EDUCATION LEGAL HOT TOPICS, GUIDANCE AND CASE LAW

15th Annual Traveling Mini-Conference
LDAH

In Collaboration with Hawai'i Department of Education

Presented by:

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INTRODUCTION

Since the Spring of 2020, the nation's special education community has had much of its focus on legal issues related to the provision of appropriate services to students with disabilities in light of the chaos of a pandemic. In addition, there continues to be a good bit of important court activity in the area of special education law that is not COVID-related. In this brief special education legal update, we will highlight some of the important legal developments related to COVID and non-COVID topics during 2021 and the first quarter of 2022, including some Ninth Circuit decisions and U.S. DOE guidance.[1]

DECISIONS AND GUIDANCE RELATED TO COVID-19 CHALLENGES/ISSUES

U.S. DOE Guidance Documents

"Return to School Roadmap: Development and Implementation of IEPs in the LRE under the IDEA," https://sites.ed.gov/idea/files/rts-iep-09-30-2021.pdf (OSERS/OSEP QA 21-06 September 30, 2021). Topics addressed in the second of the four-part Roadmap series are set forth

[1] Important Disclaimers: The information that I will discuss today is intended only as general information on special education "legal hot topics" and questions participants may have or ask. This is not intended to be legal advice and you must consult with an attorney regarding any specific matters or questions. In addition, the general information that is discussed today must be analyzed in light of the Hawai'i DOE's guidance regarding special education legal requirements and compliance.

in 8 sections – A through H – in this 41-page document. As has been the case with all of these guidance documents, OSERS notes that "the contents of this guidance do not have the force and effect of law and are not intended to bind the public... The questions and answers in this document are not intended to be a replacement for careful study of IDEA and its implementing regulations."

Important highlights are as follows:

Section A: Ensuring IEPs are in Effect at the Start of the School Year: Consists of six questions – A-1 through A-6. While LEAs are generally not required to convene IEP Team meetings to review all IEPs prior to the beginning of the school year, where an annual review has occurred and neither the LEA nor the parent believes it's necessary to review the IEP prior to the start of the school year, it will be important for LEAs and parents to consider whether there are circumstances that would require the IEP Team to convene as soon as possible to determine what revisions may be needed. When reviewing and revising IEPs, the team could develop a contingency plan as a strategy for preparedness in the event of future long-term school closures to account for virtual learning or hybrid instruction.

Questions A-4 through A-5 address questions about having IEPs in place for transfer students who enroll in a new LEA (both in-state and out-of-state) within the same school year. A-6 addresses the LEA's obligation if a student moves in between school years (like over the summer). "How an LEA meets this requirement is a matter to be decided by each individual new LEA. The new LEA could decide to adopt and implement the IEP developed for the child by the previous LEA, unless the new LEA decides that an evaluation is needed. Otherwise, the newly designated IEP Team for the child in the new LEA could develop, adopt, and implement a new IEP for the child that meets the applicable IEP requirements in the IDEA regulations.

Section B: Convening the IEP Team: Consists of four questions – B-1 through B-4. This section reminds stakeholders that an agreement to amend an IEP without a meeting cannot take the place of the annual IEP Team meeting to review and revise the IEP (B-1); reminds stakeholders about the IEP Team member excusal process and notes that virtual IEP Team meetings may continue if the parent agrees or if continued COVID prevention practices require it.

Section C: Consideration of Special Factors: Consists of eleven questions – C-1 through C-11. This section is broken into several parts: C-1 through C-2 address making decisions about the need for assistive technology services and devices that depend upon the student's needs and steps to ensure equitable access to those services when needed (including use of American Rescue Plan funds). C-3 through C-6 addresses the social, emotional, behavioral and mental health needs of children, noting that some students may need new or increased services or supports. Notably, at C-3, "[s]chools should avoid routinely using discipline to address a child's behaviors that may arise when students return to school and consider developing or revising, or ensuring the provision of, positive behavioral interventions and supports and other strategies, as appropriate." At C-4, it is noted that teachers and other school personnel must have the training and experience necessary to provide required social, emotional, behavioral and mental health supports that

meet the State's standards and that paraprofessionals and assistants with appropriate training and supervision can also assist. Questions C-7 through C-11 address school-related health needs of students with underlying medical conditions, noting at C-7 that where a student has one or more underlying medical conditions that puts them at increased risk of severe illness if they contract COVID, the IEP Team should include a team member who knows about the health needs of the child, including whether COVID prevention and reduction strategies may be needed. There is also some discussion here that makes some distinction (albeit inconsistent) between the IEP Team and a "placement team" (referenced in the LRE section of the regulations) as a "knowledgeable group of persons," which should include health professionals. C-10 and C-11 is obviously intended to address the concerns about banning masking mandates and notes that "[i]n situations where the Department finds noncompliance and voluntary compliance cannot be readily achieved, the Department will consider all its enforcement options, including a referral to the [U.S. DOJ]."

Section D: Determining Appropriate Measurable Annual Goals & Considering the Child's Need for Compensatory Services: Consists of eleven questions – D-1 through D-11. While the document thus far (and in D-1 and D-2) discusses the fact that the circumstances of COVID may require IEP Teams to convene and adjust goals and services for students who may need additional or different services when in-person schooling reconvenes, they then move into the "compensatory services" discussion beginning with D-3. While noting in D-3 that "compensatory services" has been recognized by courts as an equitable remedy to address the past failure or inability of an LEA to provide appropriate services and that courts have ordered such services, D-4 moves into suggesting that IEP Teams must make determinations about a student's need for, and the extent of, compensatory services. The QA then moves on to questions about how IEP teams can use available data to make these determinations, the situations in which it may be necessary to provide compensatory services and then, in D-7, citing to their own guidance documents, suggest that States must ensure that compensatory services are available for all IDEA-eligible students who need them because they did not receive appropriate services due to pandemic-related closures and other service disruptions. Finally, in D-9, OSERS suggests that "[f]or States and LEAs that do not utilize a process identified under IDEA for making individualized determinations about these services based on each child's unique needs and circumstances, such services likely would not be considered compensatory services." (NOTE: CASE has asked OSERS to reconsider this section of the guidance document).

Section E: Making Extended School Year Services Determinations: Consists of two questions – E-1 and E-2. OSERS notes here that if an LEA provides additional services for all students during the summer to address lost instruction, IEP Teams still must address the need for ESY services. In E-1, it is noted that "there is nothing that limits the ability of an LEA to provide ESY services to a child with a disability during times other than the summer, such as during school breaks or vacations, where appropriate to the child's needs and consistent with applicable standards." E-2 notes that a student could be eligible for both ESY and compensatory services. They also emphasize again that "compensatory services" "would generally be additional services to those that the child would be receiving during the child's school attendance (including ESY services) or as an additional period of eligibility for IDEA services."

Section F: Considering Secondary Transition Services: Consists of two questions – F-1 and F-2. This section is OSERS' guidance on what IEP Teams should consider for students whose transition or pre-employment transition services were disrupted by COVID. Provisions and requirements of the Rehabilitation Act are highlighted and it is repeated that IEPs Teams should address any need for compensatory services related to school closure or an inability to fully implement a child's transition plan.

Section G: Making Educational Placement Decisions: Consists of three questions – G-1 through G-3. This section highlights (again) the placement decision to be made by a "group of persons, including parents, who are knowledgeable about the child, the meaning of the evaluation data, and the placement options....and that placement is decided in conformity with the [LRE] provisions of [the regulations]." In G-2, it is noted that an LEA is obligated to provide special education and related services through virtual instruction upon parental request depending upon whether virtual instruction, in-person attendance, or a hybrid approach are available to all students. "These decisions are made by State and local education leaders." OSERS goes on to note that "[i]f virtual instruction is available to all students in an LEA, the LEA must ensure that a child with a disability whose needs can be met through virtual learning has an IEP implemented that provides all services and supports necessary for the child to receive FAPE through such service delivery." In G-3, OSERS notes that prior to COVID, "special education and related services provided virtually in the child's home was generally considered one of the most restrictive environments, as it typically provided little or no opportunity for the child to be educated with nondisabled peers. Virtual learning provided during the pandemic may be deemed less restrictive if it is available to all children and provides the child with a disability meaningful opportunities to be educated and interact with nondisabled peers in the regular education environment."

Section H: Resolving Disagreements Regarding a Child's Educational Program: Consists of two questions – H-1 and H-2. OSERS notes that where parents disagree with an IEP Team's decision regarding compensatory services, they can generally still file a due process or State complaint and that mediation, resolution meeting and due process hearing sessions can continue virtually, subject to the parties' agreement and applicable state provisions.

Fact Sheet: Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504 (OCR February 17, 2022).

This "Fact Sheet" can be found at https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-504.html. The stated purpose: "to remind elementary and secondary public schools of their obligations under Section 504...to provide appropriate evaluations and services to students with disabilities during the COVID-19 pandemic, including schools' responsibility to provide compensatory services."

Some important excerpts:

> If a student with a disability did not receive appropriate evaluations or services, including the services that the school had previously determined they were entitled to, then the school must convene a group of persons knowledgeable about the student to make an individualized determination whether, and to what extent, compensatory services are required. Unlike the FAPE inquiry, which requires the group to determine appropriate services going forward, the compensatory services inquiry requires looking backwards to determine the educational and other benefits that likely would have accrued from services the student should have received in the first place.
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> Compensatory services are required to remedy any educational or other deficits that result from the student with a disability not receiving the evaluations or services to which they were entitled. For example, a school may need to provide compensatory services for a student who did not receive physical therapy during school closures or for a student who did not receive a timely evaluation. Providing compensatory services to a student does not draw into question a school's good faith efforts during these difficult circumstances. It is a remedy that recognizes the reality that students experience injury when they do not receive appropriate and timely initial evaluations, re-evaluations, or services, including the services that the school had previously determined they were entitled to, regardless of the reason.
>
> In general, the individualized determinations of whether, and to what extent, compensatory services are required must be made by a group of persons knowledgeable about the student, including, for example, school nurses, teachers, counselors, psychologists, school administrators, social workers, doctors and/or family members. The following factors may be relevant for the group of knowledgeable persons to consider in determining the appropriate type and amount of compensatory services:
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> - the frequency and duration of missed instruction and related services;
> - whether special education and/or related services that were provided during the pandemic were appropriate based on the student's individual needs;
> - a student's present level of performance;
> - previous rates of progress;
> - the results of updated evaluations;
> - whether evaluations were delayed; and
> - any other relevant information.
>
> Ideally, the team of knowledgeable persons will come to a mutually acceptable decision regarding compensatory services to mitigate the impact of the COVID-19 pandemic on the child's receipt of services.

OCR goes on to suggest that a parent or guardian who believes that their child did not receive or is not receiving appropriate compensatory services may seek a hearing under the school's 504 procedures or file a complaint with OCR. "A school's agreement to provide compensatory services is one way OCR remedies disability compliance issues when appropriate."

Court Decisions

Rabel v. New Glarus Sch. Dist., 79 IDELR 71 (W.D. Wis. 2021). ALJ's decision is upheld where the school district offered FAPE for the 2020-21 school year when it proposed that the 14-year-old student with Down syndrome and autism continue to be served in a private therapeutic virtual setting for the 2020-21 school year rather than in the district's 100% online program offered for middle schoolers. Where the question is whether the student can receive a satisfactory education in a mainstream virtual setting at the middle school as requested by the parent, the evidence is clear that she cannot. There, all of the lessons were prerecorded and the parents' refusal to consider an in-person program for 2020-21--which was selected by all of her would-be classmates with disabilities--would have left this student by herself. However, the virtual instruction provided by the private therapeutic school would provide the student with synchronous live instruction in a small group setting with other students with disabilities. Given that the private setting's virtual program offers the live instruction, feedback and peer interaction that the student needs to make progress, the district's proposal is appropriate. As the ALJ explained, this student has not interacted with non-disabled students for more than two years, and her parents failed to cite any evidence in the record showing that the student was ready to interact with her non-disabled peers in a virtual or in-person setting or that placement in a regular education setting was appropriate to meet the student's needs. Although the parents disagree with the ALJ's conclusion, "it is not the court's role to independently assess [the student's] case." The court can only decide whether the ALJ came to a rational conclusion, which the ALJ did.

Reinoehl v. St. Joseph Co. Health Dept., 2021 WL 5754990, 80 IDELR 51 (Ind. Ct. App. 2021). State trial court's dismissal of 504/ADA failure to accommodate claims (and all other claims) on behalf of two teens with ADHD and depression (and one with anxiety) is affirmed, as well as the trial court's denial of the parents' request for damages and a permanent injunction. Although the 504 plans for the siblings contained accommodations to their physical environment, such as seating in the front of the room in an area free from distractions and away from main traffic areas, the parents did not show that the district refused to provide a reasonable accommodation when it denied their request for in-person instruction or prerecorded lessons, rather than providing them with synchronous instruction during times of e-learning. The fact that there were distractions in the home caused by other siblings and three pets, including "a guinea pig who frequently squeals to get attention for 5 minutes or more" was not within the district's control. In addition, where the complaint included claims for a denial of FAPE, those claims must be first exhausted via IDEA's administrative remedies. Note: The trial court's decision pretty much sums up where almost all of the COVID-related cases seeking injunctive relief and damages have gone:

> Plaintiffs' Amended Complaint is detailed and it well articulates the hardships that millions of families have been forced to endure throughout this global Covid-19 Pandemic which has now entered its thirteenth month in the United States. Plaintiffs' Amended Complaint is particularly well-stated as to the unique hardships this Covid-19 Pandemic has imposed on school aged children in general and special needs children in particular as well as their parents. However, no matter how well stated Plaintiffs' Amended Complaint is as it relates to the hardships endured by both Plaintiffs and their children in this case, that is different and distinct from stating an actionable, legal cause of action against

> Defendants....Therefore, Defendants' Motion to Dismiss...is GRANTED. Plaintiffs' Amended Complaint is DISMISSED.

Charles H. v. District of Columbia, 80 IDELR 163 (D.D.C. 2022). The District of Columbia is in contempt of court for the failure to comply with the court's Preliminary Injunction issued in June 2021 calling for implementation of the IEPs for 44 incarcerated students and status reports to the court every 30 days. "While things have improved for the month of January, every student currently enrolled in the [IYP] Program remains at an inexcusable educational deficit for this school year—a failure all the more baffling given that the Court entered its Preliminary Injunction months before the school year began." Because the district has failed to comply with the court's order and has not sought relief from the order due to any change in circumstances, the district is in contempt and has four weeks to submit an individualized plan for each student that describes how it will remedy the implementation failures for each student. The needs of each student must be identified and each must be provided with technology needed to participate in remote learning.

NON-COVID-RELATED DECISIONS AND GUIDANCE

CHILD FIND DUTY TO APPROPRIATELY/TIMELY EVALUATE

Legris v. Capistrano Unif. Sch. Dist., 79 IDELR 243 (9th Cir. 2021) (unpublished). District court's ruling that the district did not violate IDEA when it waited until the student's senior year in high school to evaluate is upheld. Here, the record does not contain "the kind of warning signs" that would have triggered the district's obligation to earlier evaluate the student who was privately diagnosed with ADHD, reading comprehension difficulties and visual impairment. Indeed, the student earned A's, B's and C's in her general education classes with the assistance of Section 504 accommodations, which supports the district's decision not to evaluate until the parents notified it that they had arranged for private 1:1 instruction. In addition, the district's subsequent determination that the student was not in need of special education services was based upon the district's thorough assessment of her needs. The parents' argument that the private 1:1 instruction and vision therapy that they provided to the student was actually "special education" that she needed is rejected.

D.C. v. Pittsburgh Pub. Schs., 80 IDELR 95 (W.D. Pa. 2022). The court cannot determine whether, as a matter of law, the district adequately addressed the needs of the first-grader when it waited almost a year before referring the student with ADHD and ODD for an IDEA evaluation. Thus, a jury will need to decide the issue and the parties' motions for judgment on the parent's 504 claim are denied. Here, district staff had multiple meetings amongst themselves and with the parent to discuss the student's behavioral difficulties, which included things like shouting, refusing to follow directions, eloping from the classroom when upset, throwing and damaging classroom items and hitting other students with a belt. While the district attempted to manage the behaviors with sensory breaks, emotion charts and a social skills group, the district continued to call the parent several times a week to pick the student up from school when his behaviors were unmanageable. In addition, the district suspended the student multiple times and did not refer him for an IDEA evaluation until after a school police officer handcuffed him on one occasion to keep him from hurting himself. Given this record, there is a genuine issue of material fact as to whether the district should have provided more behavioral supports earlier and referred him for an IDEA evaluation.

R.B. v. North East Indep. Sch. Dist., 80 IDELR 162 (W.D. Tex. 2022). Although the gifted teenager took advanced placement courses and maintained high academic performance, that does not necessarily mean that she should not be considered for special education services. Beginning in 9th grade, the student experienced increasing anxiety, was diagnosed with generalized anxiety and major depressive disorders, and exhibited self-injurious behavior and suicidal ideations. In response, her parents placed her in an outpatient treatment facility. When she returned to school, her grades declined, and she ultimately withdrew from school and was placed in a residential treatment facility. The parents filed for due process and the hearing officer found that the district violated its child find duty to identify a student suspected of having a disability. A district's child find obligation is not relieved by a student's high intelligence or consistent high academic performance; nor is it limited to students demonstrating learning gaps or deficiencies; and it extends to those not yet diagnosed and those who advance from grade to grade. A more accurate "barometer" is to determine whether a student is experiencing academic decline or experiencing difficulties that are unusual. Here, the child find duty was triggered when the student entered the residential treatment program in December, as the district had reason to evaluate since the parents had earlier reported the teen's increased anxiety in April, and her self-injurious behavior, suicidal ideations and placement at the outpatient facility in August.

Crofts v. Issaquah Sch. Dist. No. 411, 80 IDELR 61 (9th Cir. 2022). Where the district evaluated the second-grader's reading and writing difficulties appropriately and identified all of her disability-related needs, its evaluation and classification of the student as one with SLD, rather than specifically one with dyslexia, was appropriate. Thus, the district court's decision that the district had no obligation to evaluate the student specifically for dyslexia is affirmed. The district conducted a battery of assessments of the student's reading and writing skills and considered a private evaluator's assessments of the student's difficulty with phonological processing. The fact that the evaluation did not use the term "dyslexia" in the way that the parents may have preferred does not make it deficient. Therefore, the district court's correctly decided that the parents were not entitled to an IEE. In addition, the district was not required to use the parents' preferred Orton-Gillingham reading methodology where the evidence reflects that the student made appropriate progress toward her IEP goals (although not meeting them) using the district's research and evidence-based curriculum and methodologies designed to improve her reading comprehension and fluency.

ELIGIBILITY/CLASSIFICATION

Rocklin Unif. Sch. Dist. v. J.H., 80 IDELR 165 (E.D. Cal. 2022). ALJ's decision that the district erred in discounting the 5th-grade student's need for mental health services and assistance with interpersonal skills when finding him not eligible for special education services is affirmed. The district should have found the student with anxiety and ADHD eligible for IDEA services based upon his negative social interactions and aggressive response to peer bullying, rather than finding him ineligible based upon his good academic performance. Here, the student's 4th grade teacher noted his difficulties with focusing, organization, writing and peer interactions. In addition, the school psychologist evaluated the student at the end of the 4th grade and recommended services to address the student's social and emotional challenges. Although the student was still achieving some level of academic success at the time, "academic success alone does not determine whether

special education services are necessary." Reimbursement for a private school placement is, therefore, warranted.

INDEPENDENT EDUCATIONAL EVALUATIONS

L.C. v. Alta Loma Sch. Dist., 78 IDELR 271 (9th Cir. 2021) (unpublished). District court erred when concluding that the school district unnecessarily delayed providing an IEE or filing a due process complaint. Unnecessary delay is a "fact-specific inquiry" which is to focus on the circumstances surrounding the delay. In this case, the district exchanged numerous emails and letters with the student's parents from August 10, 2017, until it filed for a due process hearing on December 5, 2017. These communications reflect the parties' attempts to reach agreement on the evaluator's IEE and other issues. Indeed, the parties reached agreement on a contested issue as late as December 1, 2017. Further, the longest delay in communications, November 17–30, was largely due to the district's Thanksgiving break. The parties reached final impasse on the IEE issue on Thursday, November 30, and the district filed for a due process hearing the following Tuesday, December 5th. Thus, the court concludes that there was no unnecessary delay and reverses the district court's decision on its merits and vacates the fee award to the parents.

OBLIGATIONS TO PARENTALLY PLACED PRIVATE (OR HOME) SCHOOL STUDENTS

Capistrano Unif. Sch. Dist. v. S.W. and C.W., 21 F.4th 1125, 80 IDELR 31 (9th Cir. 2021). The district court's ruling that the district was not required to develop an IEP after the parents placed their child in a private school for her second-grade year is upheld. Once the student's parents placed her in private school, the district did not have to develop an IEP, even if the parents had filed a claim for reimbursement. "We hold that, if the student has been enrolled in private school by her parents, then the district need not prepare an IEP, even if a claim for reimbursement has been filed. To be sure, when parents withdraw a student from public school and place her in private school, all they have to do is ask for an IEP, and then the district must prepare one. But regardless of reimbursement, when a child has been enrolled in private school by her parents, the district only needs to prepare an IEP if the parents ask for one. There is no freestanding requirement that IEPs be conducted when there is a claim for reimbursement." Based upon IDEA's provision regarding private school students, there are two subgroups of students. The first subgroup -- students placed in private schools by their parents -- are entitled to equitable services, but not IEPs. Only the second group -- students placed in private schools by their districts -- have a right to an IEP each school year.

IEP CONTENT/IMPLEMENTATION ISSUES

Lamar Consolidated Indep. Sch. Dist. v. J.T., 80 IDELR 73 (S.D. Tex. 2021). District provided FAPE to student with SLD, an intellectual disability and behavioral challenges. Thus, the student was not entitled to compensatory education as awarded by the hearing officer and did not prevail at the hearing. While the school district did fail to implement the student's behavioral intervention plan during the first semester of the 2018-19 school year, a parent seeking to establish an IEP implementation failure under IDEA must demonstrate that the school district failed to implement substantial or significant provisions of the student's IEP. Here, the hearing officer primarily

focused upon a teacher's failure to implement the student's BIP, the teacher's alleged verbal and physical mistreatment of the student, and a lack of student progress during the fall of 2018. However, whether there was a denial of FAPE due to the implementation failure should be determined based upon the entire school year, rather than just the first semester. There was substantial evidence that the student made significant progress during the Spring of 2019 which the hearing officer apparently did not consider. The district presented evidence that the student met many of his behavioral and academic goals during that period and performance improved on statewide assessments. While the parent argues that the student might have made even more progress but for the implementation failures in the fall, maximization of student benefit is not required. Because the student received meaningful benefit during the school year as a whole, the parent did not prevail.

THE FAPE STANDARD

G.D. v. Swampscott Pub. Schs., 80 IDELR 149 (1st Cir. 2022). District court's decision that the district provided FAPE to a second grader with dyslexia and dysgraphia is upheld. Under the Endrew decision, the district court was required to consider the student's unique circumstances when determining whether the IEP provided by the district was reasonably calculated to provide FAPE to her. Here, both the district court and the hearing officer noted that the student had not received any special education services in kindergarten or first grade when she attended private school, and after arriving to the district as a non-reader, the student acquired some phonemic awareness skills, progressed from being unable to blend syllables or recognize vowels to being able to identify some syllable types and digraphs, and from being able to read only at a mid-kindergarten level when she entered the district in August 2017 to being able to read a Grade 1-level text by January 2018. During 2017-2018, the student acquired knowledge of word sounds and recognized increasing numbers of sight words. In addition, it was found that there was no dispute that with support, the student acquired new math skills and, with accommodations for her reading and writing deficits, there was no evidence that the student could not absorb second-grade content in science and social studies. In addition, the district court relied appropriately upon "informal" evidence of slow gains made by the student rather than upon standardized testing conducted by the parent's evaluator that showed regression. "A standardized test is, by definition, designed to measure a child's progress without regard to her individual circumstances." In fact, the parents did not indicate how much the child's standardized test scores would need to increase during the time period in question to show she made appropriate progress. Thus, the district court did not err in relying on informal evidence to determine the student's "slow gains" were appropriate in light of her circumstances.

PROCEDURAL SAFEGUARDS/VIOLATIONS

Donohue v. New York City Dept. of Educ., 79 IDELR 217 (S.D.N.Y. 2021). While the parent is entitled to reimbursement for the cost of placement of his daughter in a private school for students with TBI, he will not recover the full cost because the parent's unreasonable conduct warrants a 25% reduction in the reimbursement award. Clearly, there was no dispute that the district denied FAPE when it held two IEP meetings without the parent or that the private placement is appropriate. However, the equities in the case do not support full reimbursement where the parent made "eleventh hour" requests to reschedule team meetings, failed to show up for several

evaluations and failed to supply private school progress reports that impeded the IEP process. The record shows that the parent was unreasonable throughout the IEP process and made it difficult for the district to work with him to prepare the student's 2018-19 IEP. Thus, a reduction in reimbursement is warranted.

PRIVATE SCHOOL PLACEMENT/REIMBURSEMENT

Clarfeld v. Department of Educ., 78 IDELR 42 (D. Haw. 2021), aff'd, 80 IDELR 210 (9th Cir. 2022) (unpublished). Parent of a 14-year-old student with autism cannot rely on IDEA's stay-put provision to recover the full cost of his son's private placement for the 13 weeks that the DOE did not have an IEP in place for the 2019-20 school year, because the parent could not invoke stay-put protections for the period before he filed his due process complaint. Thus, the district court decision awarding reimbursement for only seven weeks of services is affirmed. IDEA's stay-put provision requires a school district to maintain a student's current educational placement while a dispute over his identification, evaluation, placement or services is pending. Here, the parent filed his due process complaint on Oct. 29, 2019, which was one day before the team met to develop the student's IEP for the 2019-20 school year. It is also important that the district court awarded partial reimbursement on equitable grounds because the Department failed to have an IEP in place at the beginning of the school year -- a failure that stemmed in part from the Department's decision not to hold an IEP meeting while the parent's earlier-filed State Complaint was pending. Because the parent declined all four meeting dates that the Department proposed for September 2019, however, the parent's right to reimbursement ended at that point. Finally, the district court was correct when it ruled that the October 2019 meeting included all required participants, that the parent meaningfully participated in discussions about the student's proposed placement, and that proposed public school placement was appropriate. All members of the team, including the parent and the Maui Autism Center representatives were able to provide input, ask questions and raise concerns. Thus, the proposed placement at the public school program is appropriate.

Caleb M. v. Department of Educ., 78 IDELR 133 (D. Haw. 2021). A district's denial of FAPE is not, by itself, enough to support a reimbursement claim for a unilateral private school placement at Corvid Academy. The parent must also show that the unilateral private placement was "appropriate." Here, the parent did not make this showing. Not only did the parent fail to demonstrate that the private school offered special education services, but the evidence also indicated that the school required her to provide many of the services required by her child. For example, the private school conditioned admission of the student on the parent's agreement to hire a registered behavioral technician to accompany the student at all times. In addition, the parent testified that the student's ABA services—which she described as the "core" of his program—were not provided by the private school. Even though the parent testified that the child was doing "pretty good" at the school, this is not enough to prove that the school met the student's disability-related needs.

COMPENSATORY EDUCATION

J.N. v. Jefferson Co. Bd. of Educ., 79 IDELR 151 (11th Cir. 2021). Compensatory education is not an automatic remedy for a child-find violation under IDEA. Rather, compensatory education is designed to counteract whatever educational setbacks a child encounters because of IDEA

violations—"to bring her back where she would have been but for those violations." Here, the parent did not offer evidence that the procedural violation of failing to earlier evaluate the student caused a substantive educational harm to the student and what compensatory education services could remedy that past harm. Because the parent did not provide such evidence and took the position that the procedural violation assumes that compensatory relief will be provided, the district court was correct in denying compensatory education services. In addition, the parent is not a prevailing party for purposes of recovering attorney's fees because the district had already referred the student for an evaluation when the parent initiated a due process hearing. Therefore, the eventual IEP was not the result of litigation.

McLaughlan v. Torrance Unif. Sch. Dist., 79 IDELR 75 (C.D. Cal. 2021). Even where the court has found a material IEP implementation failure, the parent has not shown that the adult student with Angelman syndrome suffered educational harm as a result of it that would support a compensatory education services award. Though the student's IEP did require that the district provide 314 minutes per day of group instruction to the student, but the student was actually placed in a 1:1 setting with a behavioral aide for the majority of the school day, the evidence shows that the student could not tolerate the group setting outlined in the IEP because he would become overstimulated and engage in behavioral outbursts within a short period of time. In addition, the district did continue to provide some small-group instruction as much as possible, including participation in a music class with peers at least once per week. Further, the special education teacher provided the student modified classwork and services in the separate classroom to the extent that he could tolerate her presence there and the activity. Since the evidence indicates that the student remained engaged throughout the day, even though his IEP was not implemented, the parent's request for compensatory services in the form of funding for 1,530 hours of specialized instruction to be placed in a trust account by the district is denied.

ATTORNEY CONDUCT AND ATTORNEY'S FEES

Oskowis v. Sedona Oak-Creek Unif. Sch. Dist., 79 IDELR 91 (9th Cir. 2021) (unpublished). The district court did not abuse its discretion when ordering $41,244 in attorney's fees to the school district under IDEA's provision that permits a court to award reasonable attorney's fees to a prevailing educational agency against a parent whose complaint of subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. The findings of the district court that the district was the prevailing party at three due process proceedings and that the parent's action were frivolous and brought for improper purposes of harassing the district and driving up litigation costs were "amply" supported by the record. (Note: The parent brought 43 legal actions against the district over a 9-year period).