Hearing Officers' & Mediators' Training
Four Points by Sheraton Richmond Airport Hotel
May 12, 2016

AGENDA

Thursday, May 12

7:30 - 8:00 a.m.	**Registration**
8:00 - 8:15 a.m.	Welcome / Announcements / Introductions **Ron Geiersbach**
8:15 - 8:30 a.m.	Virginia Education Legislative Update **Susan Williams** Department of Education
8:30 - Noon	"Special Education Law Updates" **Art Cernosia**
Noon - 1:00 p.m.	**LUNCH**
1:00 - 4:00 p.m.	Art Cernosia, continued

(Mr. Cernosia will schedule breaks during his presentation)

VITA

ARTHUR W. CERNOSIA

PERSONAL INFORMATION

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PROFESSIONAL EXPERIENCE

January 1988 to Present
EDUCATION CONSULTANT
Self-Employed

Provides consultation, training and technical assistance to state education agencies, local education agencies, parents/advocacy organizations and administrative hearing officers, mediators and administrative complaint investigators throughout the nation in the area of special education law and policy.

January 1988 to February 1999
EDUCATION CONSULTANT
Northeast Regional Resource Center
Burlington, Vermont

Provided consultation, technical assistance and training to state education agencies, parents/advocacy organizations and local education agencies in the area of special education law and policy in the eight Northeastern states.

August 1986 to September 1988
ATTORNEY
McNeil, Murray & Sorrell, Inc.
Burlington, Vermont

Private practice of law with a concentration in the area of education law, particularly special education.

January 1981 to July 1986
ASSISTANT ATTORNEY GENERAL
Vermont Department of Education
Montpelier, Vermont

Provided technical and legal assistance to Department staff, local school district personnel and parents regarding legal issues in education with special emphasis in civil rights matters; coordinated the special education due process hearing, mediation

and administrative complaint systems; represented the Department in court and administrative hearings; formulated Department positions and policies.

March 1980 to January 1981

CONSULTANT

Vermont Department of Education, Montpelier, Vermont

Provided technical assistance, resources, and in-service training to aid school districts in complying with special education law, Title IX, Title VII and related laws and regulations regarding discrimination.

November 1978 to July 1979

ATTORNEY with Blodgett and McCarren, Burlington, Vermont

Advisor to Student Legal Services Office at the University of Vermont; prepared pleadings and supporting memoranda; factual investigations; interviewed clients; research.

September 1976 to June 1978

TEACHER of Social Studies and Education Policy at Piedmont School, Charlotte, North Carolina

January 1974 to June 1976

ASSISTANT in the Southern Illinois University Ombudsperson's Office, Carbondale, Illinois.

Conducted special fact-finding and hearing panels; interviewed clients; problem solving; prepared records and reports; frequent counseling; frequent contact with all facets of the University; University policy analysis.

Worked with the University Legal Counsel's Office in preparing training materials for schools in implementing the Education For All Handicapped Children Act (PL 94-142, now the IDEA) and Title IX of the Education Amendments of 1972.

September 1972 to June 1973

TEACHER of Social Studies at DeKalb High School, DeKalb, Illinois

UNIVERSITY/COLLEGE EXPERIENCE

July 1982 to July 2014

Education Law Institute, University of Vermont, Burlington, Vermont.

Initiated the Institute which addressed the on-going needs of the education community in areas of academic offerings, in-service training and policy development.
Initiated graduate education courses in Education Law and Special Education Law.

January 1979 to May 1982.

ADJUNCT FACULTY MEMBER, St. Michael's College, Winooski, Vermont in the Master's of Science in Administration Program

EDUCATION

LAW SCHOOL

Southern Illinois University School of Law, Carbondale, Illinois
Juris Doctor Degree

UNDERGRADUATE

Northern Illinois University, DeKalb, Illinois; B.A.
Major: Political Science
Minor: Secondary Education

LICENSING

Admitted to practice law in the State of Vermont and the United States District Court, District of Vermont.

RELATED VOLUNTEER ACTIVITIES

Surrogate Parent for students with disabilities in state custody.
Special Education Advisory Committee member.

References Provided Upon Request.

Report on K-12 Legislation and Budget Amendments Approved by the 2016 General Assembly

Note: All legislation becomes effective on July 1, 2016, unless otherwise indicated.

Accreditation and school improvement

SB 368 Public schools; standards for accreditation, corrective action plan.
Chief patron: McDougle
Summary: Authorizes the Board of Education (the Board) to review once every two years or once every three years the accreditation status of any school that is not on a triennial review cycle, provided that any school that receives a multiyear accreditation status other than full accreditation is to be covered by a Board-approved multiyear corrective action plan for the duration of the period of accreditation. The bill requires the Board to review the accreditation status of a school once every three years if the school has been fully accredited for three consecutive years. The bill also provides that when the Board of Education determines that a corrective action plan submitted by a local school board is not sufficient to enable all schools within the division to achieve full accreditation, the Board may return the plan to the local school board with directions to submit an amended plan pursuant to Board guidance. Finally, the bill requires the Superintendent of Public Instruction to report to the Board on the accreditation status of all school divisions and schools. Currently the Superintendent is required to identify to the Board schools or divisions that do not meet certain criteria.

Item 139 C.9.e.4 of the 2016 Appropriation Act (Language).
If the Board of Education has required a local school board to submit a corrective action plan pursuant to § **22.1-253.13:3**, Code of Virginia, either for the school division pursuant to a division level review, or for any schools within its division that have been designated as not meeting the standards as approved by the Board of Education, the Superintendent of Public Instruction shall determine and report to the Board of Education whether each such local school board has met its obligation to develop and submit such corrective action plan(s) and is making adequate and timely progress in implementing the plan(s). Additionally, if an academic review process undertaken pursuant to § **22.1-253.13:3**, Code of Virginia, has identified actions for a local school board to implement, the Superintendent of Public Instruction shall determine and report to the Board of Education whether the local school board has implemented required actions. If the Superintendent certifies that a local school board has failed or refused to meet any of those obligations, the Board of Education shall withhold payment of some or all At-Risk Add-On funds otherwise allocated to the affected division pursuant to this allocation for the pending fiscal year. In determining the amount of At-Risk Add-On funds to be withheld, the Board of Education shall take into consideration the extent to which such funds have already been expended or contractually obligated. The local school board shall be given an opportunity to correct its failure and, if successful in a timely manner, may have some or all of its At-Risk Add-On funds restored at the Board of Education's discretion.

Board of Education

HB 196 Public elementary and secondary schools and local school divisions; information and forms.

Chief patron: Lingamfelter

Summary: Requires the Board of Education to adopt policies to ensure that the Department of Education (the Department) does not require public elementary or secondary schools or local school divisions to provide certain duplicate information or certain information that is not necessary or required pursuant to state or federal law. The bill requires the Department to study the transition to electronic submission of all information and forms to the Department by public elementary and secondary schools and local school divisions and to submit a report of its findings to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than November 1, 2016. In addition, the bill requires the Department to annually evaluate and determine the continued need for the information that it collects from public elementary and secondary schools and local school divisions and requires the Board to annually report to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health the results of such annual evaluation and determination and other matters related to collected information and forms.

HB 521 Education, Board of; annual report includes reporting requirements of local school divisions.

Chief patron: LeMunyon

Summary: Requires the annual Board of Education report to the Governor and the General Assembly to include a complete listing of each report: (i) that school divisions are required to submit to the Board or any other state agency, including name, frequency, and an indication of whether the report contains information that the local school division is also required to submit to the federal government; and (ii) that pertains to public education that local school divisions are required to submit to the federal government, including name and frequency.

Charter Schools

SB 734 Public charter schools.

Chief patron: Obenshain

Summary: Makes several changes to the provisions for the establishment and operation of public charter schools, including making changes and providing greater specificity regarding: (i) the applicability of various laws, regulations, policies, and procedures to public charter schools; (ii) the contents of charter applications; and (iii) the procedure for executing charter contracts and the contents of such contracts.

Civics

HB 36 Government courses at public high schools; civics portion of the U.S. Naturalization Test.
Chief patron: Bell, Richard P.
Summary: Requires each local school board to implement a program of instruction in each Virginia and U.S. Government course in the school division on all information and concepts contained in the civics portion of the U.S. Naturalization Test.

HB 205 Election day program; permitted activities of participants.
Chief patron: Webert
Summary: Allows election pages participating in the election day program for high school students to assist in the arrangement of voting equipment, furniture, and any other materials for the conduct of the election. The bill also allows election pages to assist in the counting of unmarked ballots prior to the opening of the polls, at the direction and under the direct supervision of the chief officer of election, but prohibits election pages from handling or touching ballots in any other circumstance. Currently, participants in the election day program are prohibited from handling or touching ballots, voting machines, and other official election materials. The bill requires the election pages to receive, from a person designated by the electoral board, training on the duties, responsibilities, and prohibited conduct of election pages. This bill is identical to **SB 381** (Vogel).

CTE, dual enrollment, workforce development and STEM

HB 66 New Economy Workforce Credential Grant Fund & Program; established.
Chief patron: Byron
Summary: Establishes the New Economy Workforce Credential Grant Fund and Program, to be administered by the State Council of Higher Education for Virginia, for the purpose of disbursing funds to certain public institutions of higher education and other educational institutions in the Commonwealth to provide grants to Virginia students who complete certain noncredit workforce training programs at the institution and subsequently attain a relevant noncredit workforce credential. The bill also includes provisions relating to the amount and terms of such grants, academic credit for the attainment of noncredit workforce credentials, and reporting on completion of noncredit workforce training programs and attainment of noncredit workforce credentials. This bill is identical to **SB 576** (Ruff).

HB 834 Virginia Growth and Opportunity Board and Fund; established, report.
Chief patron: Cox
Summary as passed: The bill provides that regional councils will be established across the Commonwealth, consisting of representatives of government and the business and education communities, and councils may submit applications for collaborative projects in their regions that enhance private-sector growth, competitiveness, and workforce development. An enactment clause adopted by the General Assembly during the Reconvened Session provides that no funds shall be awarded as grants to qualifying regions based on each region's share of

population or as grants to regional councils on a competitive basis unless authorized by a subsequent enactment of the General Assembly on or after July 1, 2016. This bill is identical to **SB 449** (Norment and Howell).

SB 245 Comprehensive community colleges; dual enrollment of students into Career Pathways program.
Chief patron: Stanley
Summary: Requires each comprehensive community college to enter into agreements with the local school divisions it serves to facilitate dual enrollment of eligible students into a Career Pathways program preparing students to pass a high school equivalency examination offered by the local school division and a postsecondary credential, certification, or license attainment program offered by the comprehensive community college.

SB 246 STEM Competition Team Grant Program and Fund; established, created.
Chief patron: Stanley
Summary: Establishes a grant program administered by the Board of Education beginning in 2017 to establish STEM competition teams at qualified schools. The bill defines qualified schools as those public secondary schools at which at least 40 percent of the students qualify for free or reduced lunch. Grants are capped at $10,000 per school per year. The bill has an expiration date of July 1, 2018.

Driver education

HB 748 Driver education; certification of online courses.
Chief patron: Greason
Summary: Allows driver training schools to provide computer-based driver education courses for the classroom portion of driver education. The Commissioner of the Department of Motor Vehicles is authorized to license such driver training schools as computer-based driver education providers.

HB 1287 Behind-the-wheel and knowledge examinations; retake of examinations.
Chief patron: Carr
Summary: Allows a person less than 19 years of age who has failed the behind-the-wheel examination for a driver's license three times to take a course of instruction based on the Virginia Driver's Manual before taking the examination a fourth time if such person has previously completed the classroom component of driver instruction at a driver training school.

Early childhood

HB 46 School Readiness Committee; Secretary of Education, et al., shall establish, increases membership.

Chief patron: Greason

Summary: Directs the Secretary of Education to establish a School Readiness Committee with the first goal of addressing the development and alignment of an effective professional development and credentialing system for the early childhood education workforce in the Commonwealth, including: (i) the development of a competency-based professional development pathway for practitioners who teach children birth to age five in both public and private early childhood education programs; (ii) consideration of articulation agreements between associate and baccalaureate degree programs; (iii) refinement of teacher licensure and education programs to address competencies specific to early childhood development; (iv) alignment of existing professional development funding streams; and (v) development of innovative approaches to increasing accessibility, availability, affordability, and accountability of the Commonwealth's workforce development system for early childhood education teachers and providers.

HB 47 Mixed-Delivery Preschool Fund and Grant Program; established, report, sunset provision.

Chief patron: Greason

Summary: Establishes the Mixed-Delivery Preschool Fund and Grant Program for the purpose of awarding grants on a competitive basis to urban, suburban, and rural community applicants to field-test innovative strategies and evidence-based practices that support a robust system of mixed-delivery preschool services in the Commonwealth. The bill requires the Virginia Early Childhood Foundation (the Foundation) to administer a request for proposal process to invite community applicants to respond with localized innovations and approaches to a mixed-delivery preschool services system. Grants are awarded by the Foundation and priority is given to applicants who: (i) commit to pursuing models of local governance that promote the successful mixed delivery of preschool services; (ii) compare classroom and child outcomes among teachers with different credentials and qualifications; (iii) use incentives to encourage participation; and (iv) use strategic assessment to discern outcomes. In addition, a Governor's recommendation, which was agreed to by the General Assembly during the Reconvened Session, requires the Board of Education to waive teacher licensure requirements upon the request of any grant recipient so long as the teachers for whom such licensure requirements have been waived meet certain basic conditions for licensure prescribed by the Board. Such basic conditions for licensure shall include education and experience qualifications that do not exceed the education and experience qualifications for program leaders of licensed child day centers as set forth in 22VAC40-185-210. The bill requires the award of six two-year grants during each year of the 2016-2018 biennium. Finally, the bill has an expiration date of July 1, 2019.

SB 467 Child day programs; exemptions from licensure.
Chief patron: Wagner
Summary: Clarifies that instructional programs offered by public schools that serve preschool-age children are exempt from licensure by the Department of Social Services. The bill further provides that education and care programs provided by public schools that are not exempt shall be regulated by the Department of Social Services instead of the State Board of Education.

English language learners

HB 241 Students who are English language learners; BOE to consider certain assessment.
Chief patron: Lingamfelter
Summary: Requires the Board of Education to consider assessments aligned to the Standards of Learning that are structured and formatted in a way that measures the content knowledge of students who are English language learners and that may be administered to such students as Board of Education-approved alternatives to Standards of Learning end-of-course English reading assessments. This bill is identical to SB 538 (Surovell).

Enrollment

SB 776 Public schools; residency of children in kinship care.
Chief patron: Barker
Summary: Allows a child receiving kinship care from an adult relative to enroll in the school division where the kinship care provider resides. The bill also allows local school divisions to require one legal parent and the kinship care provider to sign affidavits detailing the kinship care arrangement, as well as a power of attorney authorizing the adult relative to make educational decisions regarding the child.

General laws: FOIA, whistle blower protection, procurement and attorney fees

HB 817 Virginia Freedom of Information Act; record exclusions, rule of redaction, etc.
Chief patron: LeMunyon
Summary: Reverses the holding of the Virginia Supreme Court in the case of *Department of Corrections v. Surovell*, by setting out the general rule of redaction, which provides that no provision of FOIA is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by FOIA or by any other provision of law. Further, the bill states that a public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under FOIA or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under FOIA or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed. The bill defines the term "information" and provides that it is declaratory of the law as is it existed prior to the September 17, 2015, decision of the Supreme Court of Virginia in the case of the *Department of Corrections v. Surovell*. The bill also reverses that part of the holding of the Virginia Supreme

Court in the case of *Department of Corrections v. Surovell* by providing that in a FOIA enforcement action, no court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. The bill contains technical amendments. This bill is identical to **SB 494** (Surovell).

HB 818 Virginia Freedom of Information Act; designation of officer, posting of rights and responsibilities.
Chief patron: LeMunyon
Summary: Requires certain local public bodies to post a FOIA rights and responsibilities document on their respective public government Web site. The bill also requires all state public bodies, including state authorities, and all local public bodies that are subject to FOIA, to designate and publicly identify one or more FOIA officers whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of FOIA. The bill sets out where contact information for the designated FOIA officer is to be posted. The bill requires that any such FOIA officer shall possess specific knowledge of the provisions of FOIA and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council.

HB 821 Fraud and Abuse Whistle Blower Protection Act; applicability to local governmental entities.
Chief patron: LeMunyon
Summary: Includes local government and public school divisions under the Fraud and Abuse Whistle Blower Protection Act. Currently this Act is limited to state government and citizen whistle blowers. The bill reduces from $10,000 to $5,000 the threshold where the disclosure results in a savings for which a whistle blower disclosing information of wrongdoing or abuse may file a claim for reward. The bill contains technical amendments.

HB 1013 Threat assessment teams; dissemination of certain records and information.
Chief patron: Massie
Summary: Excludes from the Virginia Freedom of Information Act any records received by the Department of Criminal Justice Services pursuant to the operation of or for the purposes of evaluating threat assessment teams and oversight committees, school safety audits, and school crisis, emergency management, and medical emergency response plans of public schools and threat assessment teams of public institutions of higher education, to the extent that such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components. The bill allows criminal record, juvenile record, and health record information to be disseminated to members of a threat assessment team established by a local school board. Current law allows only threat assessment teams established by an institution of higher education to access such information. The bill provides that no member of a threat assessment team shall redisclose any such information or use the information beyond the purpose for which the disclosure was made.

HB 1117 Immunity of persons at public hearing; awarding of reasonable attorney fees and costs.
Chief patron: Loupassi
Summary: Allows the award of reasonable attorney fees and costs to any person who has a suit against him dismissed pursuant to immunity provided to him when appearing at a public hearing before the governing body of a locality or other local governmental entity.

SB 418 Virginia Public Procurement Act; installation of artificial turf or other athletic surfaces.
Chief patron: Vogel
Summary: Excludes the purchase of installation of artificial turf and track surfaces and all associated and necessary construction from the prohibition on using cooperative procurement to purchase construction.

SB 493 FOIA; closed meeting not authorized for discussion of pay increases.
Chief patron: Surovell
Summary: Clarifies that nothing in the personnel exemption in the open meetings law of FOIA shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

SB 564 Virginia Freedom of Information Act; exclusions for school personnel licensure applications.
Chief patron: Norment
Summary: Excludes records of an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, from the provisions of the Freedom of Information Act.

Graduation requirements

HB 895 High school graduation; graduation requirements.
Chief patron: Greason
Summary: Removes existing provisions related to standard and advanced studies diplomas and standard and verified units of credit and requires the Board of Education, in establishing high school graduation requirements, to: (i) develop and implement, in consultation with stakeholders representing elementary and secondary education, higher education, and business and industry in the Commonwealth and including parents, policymakers, and community leaders in the Commonwealth, a Profile of a Virginia Graduate that identifies the knowledge and skills that students should attain during high school in order to be successful contributors to the economy of the Commonwealth, giving due consideration to critical thinking, creative thinking, collaboration, communication, and citizenship; (ii) emphasize the development of core skill sets in the early years of high school; and (iii) establish multiple paths toward college and career readiness for students to follow in the later years of high school that include internships, externships, and credentialing. The bill also sets forth the procedure for the establishment of such graduation requirements. The bill specifies that such graduation

requirements shall apply to each student who enrolls in high school as (a) a freshman after July 1, 2018; (b) a sophomore after July 1, 2019; (c) a junior after July 1, 2020; or (d) a senior after July 1, 2021. This bill is similar to **SB 336** (Miller). The third, fourth and fifth enactment clauses regarding the Board's process differ. SB 336 was signed by the Governor on April 6, 2016. The Governor's recommendation to replace the third, fourth and fifth enactment clauses in HB 895 was agreed to during the Reconvened Session on April 20, 2016.

Home instruction

SB 780 Home instruction or religious exemption; information disclosure.
Chief patron: Black
Summary: Provides that a division superintendent or local school board may disclose, to the extent provided by the written consent of a student's parent, certain information that is provided by a parent or student regarding the parent's election to provide home instruction in lieu of school attendance or the parent's claim of a religious exemption.

Literary Fund

HB 577 Interpleader; funds held in escrow.
Chief patron: Robinson
Summary as passed: Allows the general district court, in an interpleader case involving an earnest money deposit held in escrow by a real estate broker, to escheat the funds to the Commonwealth to be credited to the Virginia Housing Trust Fund upon default of the stakeholders, provided that such funds have been abandoned for more than one year from the date of written notice to all stakeholders and claimants and the plaintiff and defendants are in default in the interpleader action.
GOVERNOR'S RECOMMENDATION: Replace "Virginia Housing Trust Fund" with "Literary Fund."
Status: 04/20/16: House rejected Governor's recommendation (29-Y 70-N 1-A). **NOTE**: The Governor will still have the option to veto this legislation.

Local school boards

HB 557 School efficiency reviews; scope and costs.
Chief patron: Orrock
Summary: Eliminates the 25 percent match required of local school divisions that request an efficiency review from the Department of Planning and Budget. This provision was in conflict with the current appropriation act, which requires the school division to pay the entire cost of the review. The bill also revises the operational areas examined by the efficiency review and provides that an efficiency review does not constitute an academic review that may be required by the Standards of Quality. This bill is identical to **SB 502** (Locke).

HB 942 School boards; reasonable access by certain youth groups.

Chief patron: Wilt

Summary: Requires school boards to provide reasonable and appropriate access to school property to youth-oriented community organizations, such as the Boy Scouts of America and the Girl Scouts of the United States of America, and their volunteers and staff, to distribute and provide materials to encourage participation in such organizations. The bill prohibits such access from interfering with instructional time and provides that such access may also include after-school sponsored activities.

HB 1377 School boards; assignment of teachers.

Chief patron: LeMunyon

Summary: Provides that, after September 30 of any school year, anytime the number of students in a class exceeds the statutorily prescribed class size limit, the local school division shall notify the parent of each student in such class of such fact no later than 10 days after the date on which the class exceeded the class size limits. The bill requires such notification to state the reason that the class size exceeds the class size limit and describe the measures that the local school division will take to reduce the class size to comply with the limit.

SB 664 Ballots; order of names of candidates for school boards.

Chief patron: Surovell

Summary: Provides that the names of candidates for school boards shall be listed on the ballot in an order determined by the order of the priority of time of filing for that office. In the event that two or more candidates file simultaneously, the order of filing is determined by lot by the electoral board. Currently, all candidates not nominated by a political party or a recognized political party are listed on the ballot in alphabetical order. The bill contains technical amendments.

Private schools

HB 314 Drugs; administration by certain school employees.

Chief patron: Orrock

Summary: Provides that a prescriber may authorize an employee of a school for students with disabilities licensed by the Board of Education, or a private school accredited pursuant to § 22.1-19 of the Code of Virginia as administered by the Virginia Council for Private Education, who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day, or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia pursuant to a written order or standing protocol. This bill provides immunity from civil damages to such employees for ordinary negligence in acts or omissions resulting from the rendering of such treatment, provided that the insulin is administered in accordance with the child's medication schedule, or the employee has reason to believe the individual receiving the glucagon is suffering or about to suffer life-threatening hypoglycemia. The bill also allows nurse practitioners and physician assistants to provide training programs on the administration of drugs to students of private schools accredited

pursuant to § 22.1-19 of the *Code of Virginia* as administered by the Virginia Council for Private Education.

SOL Innovation Committee

HB 525 Standards of Learning Innovation Committee; review of standardized testing in public high schools.
Chief patron: LeMunyon
Summary: Requires the Standards of Learning Innovation Committee to review and, no later than November 1, 2016, make recommendations to the Board of Education and the General Assembly on the number, subjects, and question composition of standardized tests administered to public high school students in the Commonwealth.

HB 894 Standards of Learning Innovation Committee; change in membership.
Chief patron: Greason
Summary: Requires that the membership of the Standards of Learning Innovation Committee include at least one representative of a four-year public institution of higher education and at least one representative of a two-year public institution of higher education and specifies that the business representative or representatives on the Committee shall represent the business community in the Commonwealth. The bill requires an affirmative vote of a majority of the legislative members in attendance and a majority of the nonlegislative citizen members in attendance to adopt any recommendations. The bill also staggers the terms of legislative members and nonlegislative citizen members.
Note: This bill contains an emergency clause, and it became effective on April 1, 2016 when it was signed by the Governor.

SOL instruction

HB 831 Standards of Learning; curriculum shall include computer science and computational thinking.
Chief patron: Greason
Summary: Requires the Standards of Learning established by the Board of Education and the program of instruction for grades kindergarten through 12 developed and implemented by each local school board to include computer science and computational thinking, including computer coding.

SOL tests

HB 241 Students who are English language learners; BOE to consider certain assessment.
Chief patron: Lingamfelter
Summary: Requires the Board of Education to consider assessments aligned to the Standards of Learning that are structured and formatted in a way that measures the content knowledge of students who are English language learners and that may be administered to such students as

Board of Education-approved alternatives to Standards of Learning end-of-course English reading assessments. This bill is identical to **SB 538** (Surovell).

HB 436 Standards of Learning assessments in English reading and mathematics; retake, recovery credit.
Chief patron: Austin
Summary: Requires the Department of Education to award recovery credit to any student in grades three through eight who fails a Standards of Learning assessment in English reading or mathematics, receives remediation, and subsequently retakes and passes such an assessment, including any such student who subsequently retakes such an assessment on an expedited basis.

SB 427 Standards of Learning assessments; Board of Education's calculation of passage rate.
Chief patron: Miller
Summary: Prohibits the Board of Education from including in its calculation of the passage rate of a Standards of Learning assessment for the purposes of state accountability any student whose parent has decided to not have his child take such Standards of Learning assessment, unless such exclusion would result in the school's not meeting any required state or federal participation rate.

Special education

HB 381 Standards of Learning; alternative means for children with disabilities to demonstrate achievement.
Chief patron: Greason
Summary: Requires the Board of Education to prescribe alternative methods of assessment administration for children with disabilities who meet criteria established by the Board to demonstrate achievement of the Standards of Learning. The bill provides that an eligible student's Individual Education Program team shall make the final determination as to whether an alternative method of administration is appropriate for the student.

HB 252 Assistant speech-language pathologists; duties, report.
Chief patron: Kory
Summary: Allows a person who has met the qualifications prescribed by the Board of Audiology and Speech-Language Pathology (the Board) to practice as an assistant speech-language pathologist in accordance with regulations of the Board and to perform limited duties that are otherwise restricted to the practice of a speech-language pathologist under the supervision and direction of a licensed speech-language pathologist. The bill also requires the Board to review the need for and impact of licensure or certification of assistant speech-language pathologists and report its findings to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by November 1, 2016.

SB 225 Autism Advisory Council; extends sunset provision.
Chief patron: Hanger
Summary: Extends from July 1, 2016, to July 1, 2018, the expiration of the Autism Advisory Council.

Student discipline

HB 487 School resource officers; those employed pursuant to School Resource Officer Grants Program.
Chief patron: McClellan
Summary: Relieves school resource officers employed pursuant to the School Resource Officer Grants Program from the obligation to enforce school board rules and codes of student conduct as a condition of their employment.

HB 1213 Minors; certain education records as evidence.
Chief patron: Albo
Summary: Provides that in any proceeding where a juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult on school property, property solely being used for a school-related or school-sponsored activity, or a school bus, the juvenile may introduce into evidence as relevant to whether he acted intentionally or willfully any document created prior to the commission of the delinquent act that relates to certain educational plans or behavioral assessments. The bill provides that such documents shall be admitted as evidence of the facts stated therein, provided that the minor gives notice of his intent to introduce such evidence and copies of such evidence to the attorney for the Commonwealth at least ten days before trial. The bill allows such reports or documents to be placed under seal by the court.

Student health and nutrition

HB 357 Public schools; physical activity requirement for students in grades kindergarten through five.
Chief patron: Loupassi
Summary: Requires at least 20 minutes of physical activity per day or an average of 100 minutes per week during the regular school year for students in grades kindergarten through five. This requirement becomes effective beginning with the 2018-2019 school year. The current requirement for a program of physical activity available to all students in grades six through 12 with a goal of at least 150 minutes per week on average during the regular school year is not changed. This bill is identical to **SB 211** (Miller).

HB 475 Students who have been treated for pediatric cancer; return to learn protocol.
Chief patron: Filler-Corn
Summary: Requires the Department of Education to review relevant federal regulations and suggest revisions to Department guidance documents on such federal regulations relating to a return to learn protocol for students who have been treated for pediatric cancer.

HB 954 Concussions; local school division policy to include Return to Learn Protocol for student-athletes.

Chief patron: Keam

Summary: Requires each local school division's policies and procedures regarding the identification and handling of suspected concussions in student-athletes to include a "Return to Learn Protocol" that requires school personnel to be alert to cognitive and academic issues that may be experienced by a student who has suffered a concussion or other head injury, including: (i) difficulty with concentration, organization, and long-term and short-term memory; (ii) sensitivity to bright lights and sounds; and (iii) short-term problems with speech and language, reasoning, planning, and problem solving. The school division's policies must accommodate the gradual return to full participation in academic activities of a student who has suffered a concussion or other head injury as appropriate, based on the recommendation of the student's licensed health care provider as to the appropriate amount of time that such student needs to be away from the classroom. The bill also broadens the scope of the "Return to Learn Protocol" in the Board of Education's guidelines for school division policies and procedures on concussions in student-athletes to require school personnel to: (a) be alert to cognitive and academic issues that may be experienced by a student who has suffered a concussion or other head injury; and (b) accommodate the gradual return to full participation in academic activities of a student who has suffered a concussion or other head injury. Under current law, the "Return to Learn Protocol" only imposes such requirements on school personnel with respect to student-athletes.

HB 1135 Virginia-grown food products; purchase by state agencies & institutions & local school divisions.

Chief patron: Kory

Summary: Requires that the Department of General Services to include a link to the Virginia Department of Agriculture and Consumer Services Virginia Grown Web site on the Department of General Services' central electronic procurement system to facilitate purchases of Virginia-grown food products. The bill also exempts purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed $100,000.

SB 665 Middle school student-athletes, public; pre-participation physical examination.

Chief patron: Marsden

Summary: Prohibits a public middle school student from participating on or trying out for any school athletic team or squad with a predetermined roster, regular practices, and scheduled competitions with other middle schools unless such student has submitted to the school principal a signed report from a licensed physician, a licensed nurse practitioner practicing in accordance with his practice agreement, or a licensed physician assistant acting under the supervision of a licensed physician attesting that such student has been examined within the preceding 12 months and found to be physically fit for athletic competition. The bill is a recommendation of the Commission on Youth.

Student safety

HB 659 High school family life education curriculum; programs on prevention of dating violence, etc.
Chief patron: Filler-Corn
Summary: Requires any high school family life education curriculum offered by a local school division to incorporate age-appropriate elements of effective and evidence-based programs on the prevention of dating violence, domestic abuse, sexual harassment, and sexual violence.

HB 1279 Public schools; fire drills and lock-down drills.
Chief patron: Anderson
Summary: Requires every public school to hold a fire drill at least twice during the first 20 school days of each school session and at least two additional fire drills during the remainder of the school session. Under current law, every public school is required to hold a fire drill at least once every week during the first 20 school days of each school session and at least once every month during the remainder of the school session. The bill also requires every public school to hold a lock-down drill at least twice during the first 20 school days of each school session and at least two additional lock-down drills during the remainder of the school session. Under current law, every public school is required to hold at least two lock-down drills every school year.

SB 479 Law-enforcement officers, retired; authority to carry concealed handguns.
Chief patron: Carrico
Summary: Clarifies provisions relating to the authority of retired law-enforcement officers, special agents of the State Corporation Commission and Virginia Alcoholic Beverage Control Board, members of the enforcement division of the Department of Motor Vehicles, and investigators of the security division of the Virginia Lottery to carry concealed handguns. Such officers, agents, members, and investigators who resigned after 20 years of service to accept a position covered by a retirement system authorized under Title 51.1 of the Code of Virginia fall under the same provisions as retired law-enforcement officers, agents, members, and investigators. Such retired officers, agents, members, and investigators who annually meet the training and qualification standards for active law-enforcement officers are authorized to carry concealed handguns in airports and schools and are deemed to have been issued a concealed handgun permit.

Student privacy

HB 519 School-affiliated entities; definition, providing protection for student personal information.
Chief patron: LeMunyon
Summary: Extends various protections for student information that is collected and maintained, used, or shared on certain websites, mobile applications, or online services used by school-affiliated entities. The bill defines "school-affiliated entity" as any private entity that provides support to a local school division or a public elementary or secondary school in the Commonwealth, including alumni associations, booster clubs, parent-teacher associations,

parent-teacher-student associations, parent-teacher organizations, public education foundations, public education funds, and scholarship organizations.

HB 749 School service providers; protection of student personal information.
Chief patron: Greason
Summary: Makes several changes to the provisions relating to the protection of student personal information by school service providers, including (i) defining "targeted advertising" as advertising that is presented to a student and selected on the basis of information obtained or inferred over time from such student's online behavior, use of applications, or sharing of student personal information, which does not include advertising that is presented to a student at an online location on the basis of such student's online behavior, use of applications, or sharing of student personal information during his current visit to that online location or in response to that student's request for information or feedback and for which a student's online activities or requests are not retained over time for the purpose of subsequent advertising, and (ii) clarifying that other provisions of law do not prohibit school service providers from performing certain acts, including disclosing student personal information to ensure legal or regulatory compliance, protect against liability, or protect the security or integrity of its school service.

HB 750 Student personal information; definition of school services, college & career readiness assessment.
Chief patron: Greason
Summary: Excludes any Web site, mobile application, or online service that is used for the purposes of college and career readiness assessment from the definition of "school service," thus relieving providers of such Web sites, mobile applications, and online services from the obligation to provide various protections for student personal information collected through such websites, mobile applications, and online services.

Tax credits

HB 1017 Education improvement scholarships; tax credit, reporting and other requirements.
Chief patron: Massie
Summary: Education improvement scholarships tax credit; reporting and other requirements. Modifies the tax credit by: (i) making the current required report based upon donations qualifying for the credit and scholarships awarded from such donations as of June 30 of the prior calendar year; (ii) increasing from 20 to 40 the number of days by which a scholarship foundation is required to return a preauthorization notice to the Department of Education to certify that a donor has completed his donation to the foundation; (iii) increasing from 14 to 21 the number of days by which a scholarship foundation must convert a donation of marketable securities into cash; and (iv) making clarifying and technical amendments.

Under current law, a scholarship foundation must provide a report each year by September 30 to the Department of Education showing the total number and value of donations it received in its most recent fiscal year ended. Under the bill, every scholarship foundation will report on donations received in the 12-month period ending on June 30 of each

year. This change will enable the Department of Education to determine whether a scholarship foundation has complied with the statutory requirement to disburse at least 90 percent of its tax-credit-derived funds received during each 12-month period ending on June 30 by the following June 30 for educational scholarships.

The bill clarifies that the annual audit, review, or compilation required of a scholarship foundation receiving tax-credit-derived funds is for the foundation's most recent fiscal year ended. Finally, the bill eliminates: (a) redundant reporting requirements relating to the total number and dollar value of donations received by a foundation; and the total number and dollar amount of educational scholarships awarded by a foundation; and (b) the requirement that a scholarship foundation report the percentage of first-time recipients to whom educational scholarships are awarded. This bill is identical to **SB 589** (Obenshain).

Teacher preparation, licensure and evaluation

HB 261 Armed Forces of U.S. or Va. National Guard, former members; provisional teaching licenses.

Chief patron: Yancey

Summary: Requires the Board of Education to provide for the issuance of a provisional license, valid for a period not to exceed three years, to any former member of the Armed Forces of the United States or the Virginia National Guard who has received an honorable discharge and has the appropriate level of experience or training but does not meet the requirements for a renewable teacher license.

HB 279 Career and technical education; three-year licenses.

Chief patron: Byron

Summary: Directs the Board of Education to provide for the issuance of three-year licenses to qualified individuals to teach high school career and technical education courses in specific subject areas for no more than 50 percent of the instructional day or year, on average. This bill is identical to **SB 573** (Ruff).

HB 524 Data on teacher performance and quality; confidentiality.

Chief patron: LeMunyon

Summary: Requires data collected by or for the Department of Education or the local school board or made available to and able to be used by the local school board to judge the performance or quality of a teacher, maintained in a teacher's personnel file or otherwise, to be confidential in most instances. Current law requires such data to be confidential only if it is used by a local school board to make such a judgment. The bill provides that if such data is disclosed pursuant to court order, for the purposes of a grievance proceeding involving the teacher, or as otherwise required by state or federal law, such disclosure shall be made in a form that does not personally identify any student or other teacher.

HB 682 Teacher licensure; waiver of requirements, trade and industrial education programs.
Chief patron: Peace
Summary: Permits any division superintendent to apply to the Department of Education for an annual waiver of the teacher licensure requirements for any individual whom the local school board hires or seeks to hire to teach in a trade and industrial education program who has obtained or is working toward an industry credential relating to the program area and who has at least 4,000 hours of recent and relevant employment experience, as defined by the Board pursuant to regulation. The bill requires the Department to establish a procedure for submitting, receiving, and acting upon such annual waiver applications.

HB 842 Teachers; preparation and licensure, professional development in indicators of dyslexia.
Chief patron: Cline
Summary: Requires Board of Education regulations governing teacher licensure to require every person seeking initial licensure or renewal of a license to complete awareness training, provided by the Department of Education, on the indicators of dyslexia and the evidence-based interventions and accommodations for dyslexia. The bill requires the Department of Education to collaborate with the State Council of Higher Education for Virginia to ensure that all teacher preparation programs offered at public institutions of higher education in the Commonwealth or otherwise available convey information on the identification of students at risk for learning disabilities, including dyslexia, other language-based learning disabilities, and attention deficit disorder. The bill has a delayed effective date of July 1, 2017.

SB 360 Teachers; Superintendent of Public Instruction to provide a model exit questionnaire.
Chief patron: Howell
Summary: Requires the Superintendent of Public Instruction to develop and provide to local school divisions a model exit questionnaire for teachers.

Transportation

HB 168 Passing stopped school buses; rebutting presumption, mailing of summons.
Chief patron: LaRock
Summary: Provides that a locality that has authorized by ordinance the installation and operation of a video-monitoring system on school buses for recording violations of unlawfully passing a stopped school bus may execute a summons for such violation by mailing a copy of the summons to the owner of a vehicle that unlawfully passed a stopped school bus. The bill also provides a means by which the existing presumption that the registered owner of the vehicle was the vehicle operator at the time of the violation can be rebutted and requires that this information be included with the mailing of the summons. The bill gives the summoned person 30 business days from the mailing of the summons to inspect information collected by a video-monitoring system in connection with the violation. This bill is identical to **SB 120** (Carrico).

HB 353 School boards, local; transportation agreements with nonpublic schools.
Chief patron: Greason
Summary: Authorizes local school boards to enter into agreements with nonpublic schools to provide student transportation to and from school field trips. Current law authorizes such agreements for transportation to and from school. This bill is identical to **SB 250** (Black).

Standards of Quality (SOQ)

Numerous bills have been approved by the 2016 General Assembly (and are listed in the chart below with hyperlinks) that amend the *SOQ*. Additional information regarding amendments to the *SOQ* will be provided in a separate Superintendent's memorandum.

§ 22.1-253.13:1 (Standard One)	§ 22.1-253.13:2 (Standard Two)	§ 22.1-253.13:3 (Standard Three)	§ 22.1-253.13:4 (Standard Four)	§ 22.1-253.13:10
HB 36 HB 357 HB 831 SB 211	HB 8 HB 1377	HB 241 HB 381 HB 436 HB 895 SB 336 SB 368 SB 427 SB 538	HB 831 HB 895 SB 336	HB 894

Studies

Resolutions

HJ 97 Commonwealth's aerospace industry; Joint Commission on Technology and Science to study.
Chief patron: Yancey
Summary: Directs the Joint Commission on Technology and Science (JCOTS) to (i) identify strategies to grow Denbigh High School's Aviation Academy and encourage its transformation into a statewide program, to be named the Virginia Aviation Academy; (ii) research and identify federally funded research and development activities in the Commonwealth and recommend strategies to create additional opportunities for such activities; (iii) collect information regarding practices and efforts used successfully in other states to grow their aerospace industries; (iv) analyze the potential advantages and disadvantages of eliminating taxation on aerospace and aviation parts and labor; (v) gather information regarding opportunities in the Commonwealth related to maintenance and rehabilitation of aerospace equipment; (vi) explore any other topics related to growing the Commonwealth's aerospace industry; (vii) request the

Virginia Economic Development Partnership to develop strategies to grow the Commonwealth's aerospace industry and (viii) consult with representatives of all relevant stakeholders, including but not limited to public and private institutions of higher education, the Virginia Academy of Science, Engineering, and Medicine, the NASA Langley Research Center, the NASA Wallops Flight Facility, and the Mid-Atlantic Regional Spaceport. The final report of JCOTS, due no later than the first day of the 2017 Session of the General Assembly, shall be entitled "A Blueprint for Growth of the Virginia Aviation and Aerospace Industry." This resolution is identical to SJ 97 (Newman).

HJ 112 Public elementary & secondary education; report.

Chief patron: Landes

Summary: Establishes a two-year joint committee consisting of seven members of the House Committee on Education and six members of the Senate to study the future of public elementary and secondary education in the Commonwealth. This resolution is identical to **SJ 85** (Deeds).

HJ 157 Virginia Community College System; Joint Legislative Audit and Review Commission to review.

Chief patron: Jones

Summary: Directs the Joint Legislative Audit and Review Commission to review the Virginia Community College System. This is a two-year study.

SJ 63 Child day programs; Department of Social Services to study programs exempt from licensure.

Chief patron: Hanger

Summary: Requests the Department of Social Services to (i) review all categories of child day programs exempt from licensure under § 63.2-1715, (ii) formulate recommendations regarding whether such programs should remain exempt from licensure or whether any modifications are necessary to protect the health and well-being of the children receiving care in such programs, and (iii) consult with all relevant stakeholders.

SJ 88 Early childhood development programs; JLARC to study specific programs.

Chief patron: Norment

Summary: Directs the Joint Legislative Audit and Review Commission to study specific early childhood development programs, prenatal to age five, in the Commonwealth in order for the General Assembly to determine the best strategy for future early childhood development investments. The Commission shall report to the 2018 Session of the General Assembly.

<u>2016 Appropriation Act</u>

Item 132.E

The Department shall convene an interagency workgroup to assess the barriers to serving students with disabilities in their local public schools. The workgroup shall assess existing policies and funding formulas including school divisions' program requirements, localities'

composite indices, local Children's Services Act (CSA) match rate allocations, local CSA rate setting practices, the impact of caps on support positions, policies for transitioning students back to the public school, and funding for local educational programming based on models which are collaborative and create savings for both local and state government while providing youth an educational option within their communities. Membership shall include a balance of local and state representatives, all impacted state agencies, Local Education Agency (LEA) representatives, local CSA representatives, local government officials, local special education administrators, stakeholder organizations, parent representatives, the Arc of Virginia, the Coalition for Students with Disabilities, and members of the Virginia General Assembly. The workgroup shall make recommendations to the Virginia Commission on Youth prior to the 2017 General Assembly Session.

Item 139.C.28.f.5
The Department of Education shall review the distribution methodology used to determine the Governor's School tuition payments by November 4, 2016, and submit the findings of the review to the Chairmen of House Appropriations and Senate Finance Committees. The review shall include, but not be limited to, consideration of the length of the academic program day with the intent to determine and provide an equitable distribution of tuition payments based on the actual length of academic program day, the appropriate state and local shares, and the academic model used by Governor's Schools in the configuration of the funding formula.

Item 139.C.28.i
The Department of Education is directed to develop, in collaboration with the school divisions and community colleges in the Roanoke Valley region, a model proposal that establishes a Regional Career and Technical Governor's School Center. The 2016 Appropriation Act includes $100,000 the first year for this purpose.

Item 137.G
By November 1 each year, school divisions shall report to the Department of Education the status of broadband connectivity capability of schools in the division on a form to be provided by the Department. Such report shall include school-level information on the method of Internet service delivery, the level of bandwidth capacity and the degree such capacity is sufficient for delivery of school-wide digital resources and instruction, degree of internet connectivity via Wi-Fi, cost information related to Internet connectivity, data security, and such other pertinent information as determined by the Department of Education. The Department shall provide a summary of the division responses in a report to be made available on its agency Web site.

Item 137.H
The Department of Education is directed to holistically review the statewide use of technology in the classroom and all sources of digital content development, and online learning such as virtual courses and innovative blended learning language and literacy technology options. The review shall include, but not be limited to, various types of technology currently used in the classroom such as personal computers, tablets, laptops, or other hand held devices, and how

any such technology are used and coordinated with the various types of digital content or on-line options that support student academic improvement. The Department of Education shall report its preliminary findings to the Chairmen of the House Appropriations and Senate Finance Committees by November 1, 2017.

Letter

Governor McAuliffe to Dr. Staples (dated April 5, 2016): Establish a working group to look at virtual learning options, to include the advocates for and patron of HB 8 (2016, vetoed). Please report back to me on your plans to further enhance virtual learning in the Commonwealth by November 15, 2016.

Legislation Vetoed by the Governor

HB 8 Virginia Virtual School; Board established.
Chief patron: Bell, Richard P.
Summary: Establishes the Board of the Virginia Virtual School (the Board) as a policy agency in the executive branch of state government for the purpose of governing the full-time virtual school programs offered to students enrolled in the Virginia Virtual School (the School). The Secretary of Education is responsible for such agency. The 14-member Board is given operational control of the School and assigned powers and duties. Beginning with the 2018-2019 school year, the bill requires the School to be open to any school-age person in the Commonwealth and provide an educational program meeting the Standards of Quality for grades kindergarten through 12, with a maximum enrollment of 5,000 students statewide. The bill requires the average state share of Standards of Quality per pupil funding for each enrolled student to be transferred to the School.
Governor McAuliffe to Dr. Staples in letter dated April 5, 2016: ..."I would like you to establish a working group to look at these issues [virtual learning options], to include the advocates for and patron of HB 8. Please report back to me on your plans to further enhance virtual learning in the Commonwealth by November 15, 2016."

HB 259 SOL; Bd. of Education prohibited from adopting revisions that implement Common Core State Standards.
Chief patron: LaRock
Summary as introduced: Prohibits the Board of Education from replacing the educational objectives known as the Standards of Learning with Common Core State Standards without the prior statutory approval of the General Assembly but permits the Board to continue or create an educational standard or assessment that coincidentally is included in the standards referred to as the Common Core State Standards.

HB 389 Virginia Parental Choice Education Savings Accounts; established, report, effective clause.
Chief patron: LaRock
Summary: Permits the parents of certain students with disabilities to apply to their resident school division for a Parental Choice Education Savings Account, to consist of the student's Standards of Quality per pupil funds and to be used for certain expenses of the student, including: (i) tuition, fees, or required textbooks at a private elementary or secondary school or preschool that is located in the Commonwealth and does not discriminate on the basis of race, color, or national origin; (ii) educational therapies or services for the student from a practitioner or provider, including paraprofessionals or educational aides; (iii) tutoring services; (iv) curriculum; (v) tuition or fees for a private online learning program; (vi) fees for a nationally standardized norm-referenced achievement test, an Advanced Placement examination, or any examination taken to gain admission to an institution of higher education; or (vii) tuition fees or required textbooks at a public two-year or four-year institution of higher education in the Commonwealth or at an accredited private institution of higher education in the

Commonwealth. The bill also contains provisions for the audit and revocation of such accounts. The bill contains a reenactment clause.

HB 516 Education, Board of; policy on sexually explicit instructional material.

Chief patron: Landes

Summary: Requires the Board of Education to establish a policy to require each public elementary or secondary school to: (i) notify the parent of any student whose teacher reasonably expects to provide instructional material that includes sexually explicit content, as defined by the Board; (ii) permit the parent of any student to review instructional material that includes sexually explicit content upon request; and (iii) provide, as an alternative to instructional material and related academic activities that include sexually explicit content, nonexplicit instructional material and related academic activities to any student whose parent so requests.

HB 518 School boards, local; to provide students with option to transfer to another school division.

Chief patron: LeMunyon

Summary as passed House: Requires, notwithstanding any agreement, waiver from the federal government, or provision of law to the contrary, the Board of Education, effective starting with the 2017-2018 school year, to select 12 schools identified for comprehensive support and improvement and require such schools to provide all enrolled students with the option to transfer to another public school in the school division in accordance with relevant federal law and subject to certain conditions and limitations established by the relevant local school board. The bill will not become effective unless reenacted by the 2017 Session of the General Assembly, except that the Board of Education is directed to report on the costs of implementation of the bill to the relevant General Assembly committees.

HB 1234 School security officers; carrying a firearm.

Chief patron: Lingamfelter

Summary as passed: Authorizes a school security officer to carry a firearm in the performance of his duties if he is a retired law-enforcement officer who meets the firearms training standards for active law-enforcement officers, the local school board grants him the authority to carry a firearm in the performance of his duties, and he is not otherwise prohibited by state or federal law from possessing a firearm.

SB 612 Students who receive home instruction; participation in interscholastic programs.

Chief patron: Garrett

Summary as introduced: Prohibits public schools from joining an organization governing interscholastic programs that does not deem eligible for participation a student who: (i) receives home instruction; (ii) has demonstrated evidence of progress for two consecutive academic years; (iii) is in compliance with immunization requirements; (iv) is entitled to free tuition in a public school; (v) has not reached the age of 19 by August 1 of the current academic year; (vi) is an amateur who receives no compensation but participates solely for the educational, physical, mental, and social benefits of the activity; (vii) complies with all

disciplinary rules and is subject to all codes of conduct applicable to all public high school athletes; and (viii) complies with all other rules governing awards, all-star games, maximum consecutive semesters of high school enrollment, parental consents, physical examinations, and transfers applicable to all high school athletes. The bill provides that no local school board is required to establish a policy to permit students who receive home instruction to participate in interscholastic programs. The bill permits reasonable fees to be charged to students who receive home instruction to cover the costs of participation in such interscholastic programs, including the costs of additional insurance, uniforms, and equipment. The bill has an expiration date of July 1, 2021, and is identical to **HB 131** (Bell, Robert B.)

Special Education Law Up-Date

Virginia Hearing Officer/Mediator Training

Virginia Department of Education

May 2016

Presenter: Art Cernosia, Esq.
Williston, Vermont

Every Student Succeeds Act

Special Education Teacher Qualifications

The term "highly qualified" teacher is removed from the IDEA. It is replaced by amending the IDEA at 20 U.S.C. 1412(a)(14(C) to read that each person employed as a special education teacher:

1. has obtained full State certification as a special education teacher (including participating in an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in section 2005.56(a)(2)(ii) of title 34, Code of Federal Regulations, as such section was in effect on November 28, 2008), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except with respect to any teacher teaching in a public charter school who shall meet the requirements set forth in the State's public charter school law;
2. has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
3. holds at least a bachelor's degree.

(ESSA, Section 9214(d))

Accommodations

The ESSA requires that students on IEPs and those students receiving accommodations under Section 504 are provided "appropriate accommodations, such as interoperability with, and ability to use assistive technology" on assessments. (Sec. 1111(b)(2)(B)(vii)(II))

In addition, each State Plan must address how the State will develop, disseminate information on and promote the use of appropriate accommodations. The purpose is to increase the number of students with significant cognitive disabilities participating in academic instruction and assessments for the grade level in which the student is enrolled.

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Alternate Assessments

A State may provide an alternate assessment for students with significant cognitive disabilities that is aligned with the State's academic standards.
The IEP Team will make this determination.
The parents must be "clearly informed" that their student's academic achievement will be measured based on alternate standards and how the alternate assessment may delay or otherwise affect their student's ability to complete the requirements for a regular high school diploma.
The total number of students assessed for each subject (math, reading/language arts, science) using the alternate assessment cannot exceed 1 percent of the total number of students assessed in the State who are assessed in that subject.
The law prohibits a cap on any local education agency (LEA) of the percentage of students administered an alternate assessment. An LEA exceeding the 1% state cap shall submit information to the SEA justifying the need to exceed the cap. The SEA shall provide "appropriate oversight" of such LEA as determined by the SEA.
(Sec. 1111(b)(2)(D))

Staff Training

The ESSA requires that each State Plan describe how general and special education teachers and "other appropriate staff" will know how to administer alternate assessments and make appropriate use of accommodations for students with disabilities on all assessments. (Sec. 1111(b)(2)(D)(i))

IDEA Regulation Update

Maintenance of Effort (MOE)

New IDEA regulations were published on April 28, 2015 making the following amendments:
1. If a Local Education Agency (LEA) fails to meet MOE, the level of expenditures required in the subsequent fiscal year is the level of effort that would have been required in the absence of that failure and not the actual reduced level of expenditures by the LEA. (34 CFR 300.203(c))
2. In addition, if the LEA fails to maintain its level of expenditures for the education of children with disabilities and therefore does not meet the MOE requirements, the State Education Agency (SEA) is liable in a recovery action. The SEA would be liable to return to U.S. Department of Education, using nonfederal funds, either the amount by which the LEA failed to maintain its level of expenditures in that fiscal year or the amount of the LEA's Part B subgrant in that fiscal year, whichever is lower. (34 CFR 300.203(d))

The United States Department of Education issued a question and answer guidance document to more fully explain the MOE final regulations issued. The document can be found at: https://osep.grads360.org/#program/fiscal

Alternate Assessments Based on Modified Academic Standards

On August 21, 2015 the United States Department of Education issued final regulations amending the ESEA and the IDEA to no longer authorize a State to define modified academic achievement standards and develop alternate assessments based on those modified academic achievement standards for eligible students with disabilities. (see 34 CFR 300.160(c)(2) and (3))
Note: Nothing in the final regulations changes the ability of States to develop and administer alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities or alternate assessments based on grade-level academic achievement standards for other eligible students with disabilities in accordance with the ESEA and the IDEA, or changes the authority of IEP teams to select among these alternate assessments for eligible students.

IDEA Proposed Regulations
Significant Disproportionality

The United States Department of Education has proposed regulations amending the IDEA's "significant disproportionality" requirements based on a student race or ethnicity. The proposed rules were published in the Federal Register of March 4, 2016. The Summary in the proposed regulations states:

> With the goal of promoting equity in IDEA, the regulations would establish a standard methodology States must use to determine whether significant disproportionality based on race and ethnicity is occurring in the State and in its local educational agencies (LEAs); clarify that States must address significant disproportionality in the incidence, duration, and type of disciplinary actions, including suspensions and expulsions, using the same statutory remedies required to address significant disproportionality in the identification and placement of children with disabilities; clarify requirements for the review and revision of policies, practices, and procedures when significant disproportionality is found; and require that LEAs identify and address the factors contributing to significant disproportionality as part of comprehensive coordinated early intervening services (comprehensive CEIS) and allow such services for children from age 3 through grade 12, with and without disabilities.

The proposed regulations could be found at: https://www.gpo.gov/fdsys/pkg/FR-2016-03-02/pdf/2016-03938.pdf The public comment period is open until May 16, 2016.

Case Law Update

I. Child Find/Evaluation Issues

A. The U.S. Department of Education issued a guidance letter regarding students who have dyslexia, dyscalculia and dysgrahia which are conditions that "could qualify" a student as having a specific learning disability under the IDEA.
The Department stated that for those students who may need additional academic and behavioral supports to succeed in a general education environment, schools may choose to implement a multi-tiered system of supports (MTSS), such as response to intervention (RTI) or positive behavioral interventions and supports (PBIS). The Department defined MTSS as "schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors." Within the multi-tiered instructional framework, schools identify students at risk for poor learning outcomes, including those who may have dyslexia, dyscalculia, or dysgraphia; monitor their progress; provide evidence-based interventions; and adjust the intensity and nature of those interventions depending on a student's responsiveness.
The guidance states that "Children who do not, or minimally, respond to interventions must be referred (emphasis added) for an evaluation to determine if they are eligible for special education and related services". In addition, the Department reiterated that that a parent may request an initial evaluation at any time to determine if a child is a child with a disability under IDEA and the use of MTSS, such as RTI, may not be used to delay or deny a full and individual evaluation under the IDEA.
Lastly, the Department clarified that "there is nothing in the IDEA that would prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in IDEA evaluation, eligibility determinations, or IEP documents."
Note: The Department's guidance indicated that there was no prohibition against but did not state that the terms must be used in evaluations, eligibility determinations or in the IEP. Dear Colleague Letter 66 IDELR 188 (United States Department of Education, Office of Special Education and Rehabilitative Services (2015)).

B. A 13 year old student with autism had a behavior component in her IEP based on an independent educational evaluation conducted at school district expense. The student received supports, including a one to one

support aide, provided by the Center for Autism and Related Disorders (CARD). The next school year the parents made a numerous requests for a reevaluation of the student's behavior based on the student's worsening behavior including aggressive behavior which posed a threat to her health and safety.

The school took the position that the student's behavior was continuously assessed by CARD's support services which functioned as an informal assessment. The CARD assessment was based on the support aide's observation of the student as well as data she collected on the student's maladaptive behavior.

The Court held that the school failed to properly assess the student's behavior which denied the student a FAPE. The data collected through observations by the support aide does not meet the IDEA's requirement that a school "use a variety of assessment tools and strategies". In addition, the support aide was not qualified to conduct a behavioral assessment.

The student's maladaptive behaviors resulted in her being removed from the classroom on several occasions which interfered with her ability to learn and access information. As a result, she was denied educational benefit. M.S. v. Lake Elsinore Unified School District 66 IDELR 17 (United States District Court, Central District, California (2015)).

C. A student was found eligible for special education as a student with a specific learning disability. Her IEP focused on reading, math and transition services. Her parent had informed the school on several occasions that the student was suffering from a hearing loss and had undergone seven ear surgeries and was being fitted for a hearing aid. The Court, in overturning the hearing officer's and District Court's decision, found that the lack of a comprehensive evaluation of the student's hearing denied the student a FAPE.

Although the parent had never requested an evaluation of the student's hearing, the IDEA places an independent responsibility on the school to initiate an evaluation/reevaluation when it is required regardless of whether the parent sought an evaluation. The information provided by the parent regarding the student's hearing put the school on notice of its duty to evaluate. As a result of the school's failure to obtain the necessary information regarding the student's hearing, no meaningful IEP goals or services were provided. Phyllene W. v. Huntsville City Board of Education 66 IDELR 179 (United States Court of Appeals, 11th Circuit (2015)). Note: This is an unpublished decision.

D. The parents of a student with autism emailed the school district to request an IEE at public expense. The school district granted the request. In its response, the school district stated that the assessment must follow the requirements outlined in state policy and provided a link to an online version of the state policy document. In addition, the school imposed a

financial cap of $3,000 on the IEE with the provision that the parents may submit additional information as to why the limit should be exceeded. The parents did not respond and eventually sent the school a bill for over $8,000.

The IEE invoices were submitted to the school over a year after the school approved public payment of the IEE. After considering the IEE report, the school felt that the IEE conducted did not follow the state evaluation requirements and therefore the school district refused to reimburse the parents. When the school district notified the parents that the IEE was not compliant with state policy, it invited the independent evaluator to contact the school district regarding the areas of non-compliance. There was no evidence that such contact was made.

The parents requested a due process hearing. The Court reversed the decisions of the ALJ and District Court denying reimbursement for the IEE. In so ruling the Court:

1. Remanded the case to determine whether the IEE "substantially complied" with state evaluation requirements;
2. Upheld the financial cap---even if entitled to reimbursement held that the parents could not be reimbursed more than the $3,000 cap;
3. Concluded that the school district had no legal obligation to request a hearing if it denied reimbursement based on its conclusion that the IEE did not meet agency criteria. A request must be made only if the IEE is denied on the ground of the school's conclusion that its evaluation is appropriate.
4. Addressed the timeliness issue of requesting a hearing "without unnecessary delay". Although the Court found that the school did not have a legal obligation to request a hearing the Court observed that the school could not "wait indefinitely forcing [the parents] to either demand a hearing or forsake reimbursement".

The Court held that the three month period from the submission of the invoices to the due process hearing (requested by the parent) did not violate the unnecessary delay standard. Seth B. v. Orleans Parish School Board 810 F.3d 961, 67 IDELR 2 (United States Court of Appeals, 5th Circuit (2016)).

E. The Court held that the parents were entitled to an IEE at public expense. In this matter, the school district did not meet its burden of proving its reliance on a previous school district's evaluation was appropriate. The previous school district evaluated the student when he was placed in a Juvenile Detention Center located in the district. The Court found that the district of legal residence should have conducted a new evaluation when the student was discharged from the Detention Center and reentered high school in his district of residence. D.A. v. Meridian Joint School District No. 2 65 IDELR 253 (United States Court of Appeals, 9th Circuit (2015).

F. The United States Department of Education issued a guidance letter stating that a parent may request an Independent Educational Evaluation at school

district expense if they feel that the school did not assess all of the students educational needs. Specifically, the letter states:

> When an evaluation is conducted in accordance with 34 CFR §§ 300.304 through 300.311 and a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs.

Letter to Baus 65 IDELR 81 (United States Department of Education, Office of Special Education Programs (2015))

II. Eligibility Issues

A. A student with autism was found ineligible for special education based on the Team's conclusion that there was no adverse affect on the student's educational performance. The Team based its decision on the school's evaluation and two independent educational evaluations.

The Court of Appeals in a Memorandum Decision, affirmed the decisions by the Eligibility Team, the Hearing Officer and the District Court that the student was not eligible for special education. Although the student had Asperger's Syndrome, the Court held that the evidence did not support the student's disability having an adverse effect on his educational performance putting him in need of special education.

Although the parents alleged that the school district focused too much on the student's academic performance, the hearing officer and the district court noted that the student had done well in classes that also emphasized pre-vocational and life skills. Therefore, the Court noted that in making the eligibility decision, the Team considered both academic and non-academic factors in reaching its conclusion. D.A. v. Meridian Joint School District No. 2 65 IDELR 286 (United States Court of Appeals, 9th Circuit (2015).

B. The Court of Appeals in a Memorandum Opinion upheld the District Court's conclusion that a student who was attending a private school was not eligible for special education as having a specific learning disability. The Court based its decision on evidence presented by public school that the public school staff's classroom observations in the private school showed that the student performed well in his classroom and was generally engaged with his class. He was receiving good grades and received only "tier one" accommodations. Tier 1 accommodations are those that are provided to all students. Hawaii Department of Education (DOE) v. Patrick P. 65 IDELR 285 (United States Court of Appeals, 9th Circuit (2015)

C. A student with autism was found eligible for special education and provided IEP services. The parents moved to a new state where the new school district adopted the IEP.

Two years later the three year reevaluation of the student was due. Based on the new evaluations, the Team determined that the student was no longer eligible for IEP services since his disability did not adversely affect his educational performance. The parents and school agreed that although the term "educational performance" is not defined in the IDEA or state law, it includes a student's academic, social and psychological needs. However, the parents argued that educational performance should be measured by those factors across all settings including the home while the school members of the Team focused on those factors as it affected his school performance. Although he had problematic behaviors at home, including self injurious acts, his behavior at school was generally good. The parents challenged the decision.

The Court of Appeals, in affirming the hearing officer and District Court, upheld the Team's decision. The Court rejected the parents broader interpretation that behavior at home should be considered in determining adverse affect on educational performance. To rule otherwise, the Court observed "would require schools to address all behaviors flowing from a child's disability, no matter how removed from the school day." Q.W. v. Board of Education of Fayette County 115 LRP 53933 (United States Court of Appeals, 6th Circuit (2015)). Note: This is an unpublished decision. Appeal to the United States Supreme Court denied.

III. IEP/FAPE

A. The U.S. Supreme Court in Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al. (102 S. Ct. 3034, IDELR 553:656 (1982)) held that an inquiry in determining whether a FAPE is provided is twofold:

1. Have the procedures set forth in the IDEA been adequately complied with?

2. Is the IEP reasonably calculated to enable the child to receive educational benefits?

B. Procedural Issues

1. The Court of Appeals affirmed the hearing officer's decision that a student with autism was provided a FAPE. In a short memorandum decision, the Court held that the student's parents were not denied a meaningful opportunity to participate in the development of her IEP simply because the school did not clarify exactly what its offer of 30 minutes per week of social skills training entailed.

The Court also concluded that the student's parents did not provide sufficient evidence to show that the IEP was not reasonably calculated to address the student's educational needs, in particular, her socialization needs. Relying on the testimony of a behavioral specialist, both the hearing officer and the district court determined that the student did not require a one-to-one aide. Lastly, the Court found that there was no legal violation concerning her "mainstreaming" in the general education classes at the public school. Lainey C. v. Hawaii Department of Education (DOE) 594 F.Appx. 441, 65 IDELR 32 (United States Court of Appeals, 9th Circuit (2015). Note: This is an unpublished decision.

2. The Court in a Memorandum Opinion affirmed the District Court's decision (which reversed the ALJs decision) that FAPE was denied when the school district held the IEP Team meeting in spite of the fact that the parents informed the district four days ahead of time that they would be unable to attend. A school district can make an IEP Team decision without the parents only if it is unable to obtain their participation which was not the case here.
The school district claimed that the parents could not raise the issue of parental participation since it was not included in the due process hearing complaint. The Court of Appeals held that the school district waived this argument since the district did not raise it in the District Court proceeding. D.B. v. Santa Monica-Malibu Unified School District 65 IDELR 224 (United States Court of Appeals, 9th Circuit (2015) Note: This is an unpublished decision.

3. The parents of a student with autism initiated a due process hearing alleging that FAPE was denied. Among the allegations, the parents argued that the school violated their IDEA rights to be meaningful participants at their student's IEP meetings by holding two meetings during the summer while the parents were out of the country.
The Court, in affirming the hearing officer, found no violation. The school had offered numerous dates to the parents for an IEP meeting and also offered alternative means of participating through telephone or videoconferencing. The parents did not accept the offer. Further, the school recorded the summer meetings and provided them with transcripts. In addition, the parents did not attend the IEP meeting that was held after their return from their travels. Therefore, the Court concluded that there was no denial of FAPE since the school made significant efforts to involve the parents in the IEP process. Dervishi v. Stamford Board of Education 66 IDELR 6 (United States District Court, Connecticut (2015))

4. The parent of a student with a traumatic brain injury initiated a due process hearing against the school alleging, among other issues, that the school denied her a meaningful opportunity to participate by holding an IEP meeting without her in attendance resulting in a denial of FAPE.
   The Court found that although the parent did not explicitly refuse to attend the IEP meeting "her actions were tantamount to refusal". There were numerous attempts to schedule an IEP meeting from early August to mid November. On the morning of the meeting scheduled for November the parent emailed the school indicating she was sick and would not be able to attend. She asked that the meeting be rescheduled once again. The principal responded by stating that the meeting would proceed and offered the parent the opportunity to participate by telephone. The parent refused. The principal indicated that the meeting would go forth since the student had "urgent academic and emotional needs" that had to be addressed.
   The Court distinguished this case from the Doug C. 61 IDELR 91, 720 F.3d 1038 (9th Circuit (2013)) decision. In that case, the Court found that FAPE was denied by holding an IEP meeting without the parents in attendance in order to meet the IDEA's timeline requirement and because of the inconvenience for team members.
   Here, the Court held that the school made a reasonable determination about which course of action would least likely to result in a denial of FAPE. The student's IEP goals "stagnated" due to the "endless requests for continuances of the meetings". A.L. v. Jackson County School Board 66 IDELR 271 (United States Court of Appeals, 11th Circuit (2015)). Note: This is an unpublished decision.

5. The parents challenged the IEP on procedural grounds alleging that the IEP Team was not properly composed since there was not at least one general education teacher of the student in attendance. The student's general education teachers were invited to the IEP meeting but did not attend.
   The Court concluded that the IDEA procedural requirements were met. The Assistant Principal, who also was credential as a general education teacher and taught a Spanish class during the school year, did attend and participate in the development of the IEP. As the ALJ found, the evidence also established that he was qualified to and he did contribute his knowledge as a general education teacher of the academic opportunities available to student at the high school and the qualifications of the teaching staff to address the student's needs.
   The Court further opined that even if there was a procedural

violation it was "harmless because it did not deprive [the student] of an educational opportunity or infringe on his parents' participatory rights." Z.R. v. Oak Park Unified School District 66 IDELR 213 (United States Court of Appeals, 9th Circuit (2015)). Note: This is an unpublished decision.

6. The IDEA gives the parent the right to bring another individual, including their attorney, with them to a scheduled IEP Team meeting. Although the IDEA requires that the school district inform the parents in advance of the IEP meeting who will be in attendance at the school district's invitation, there is no similar requirement for the parent. Therefore, the parent has no legal obligation to inform the school district of others who will be attending the IEP meeting with them including their attorney. However, OSEP did observe that "in the spirit of cooperation and working together as partners in the child's education, a parent should provide advance notice to the public agency if he or she intends to bring an attorney to the IEP meeting."
If a parent brings their attorney to the IEP meeting without first notifying the school district, it would be permissible for the school district to reschedule the meeting to another date and time if the parent agrees so long as the postponement does not result in a delay of FAPE. Letter to Andel 116 LRP 8548 (United States Department of Education, Office of Special Education (2016)).

7. The Court concluded that the IEP for a student with autism was both procedurally and substantively appropriate. In addition to other issues, the parents alleged that the school failed to adequately report the student's progress toward the annual goals and objectives listed in his IEPs. They contend the lack of progress reporting deprived them of meaningful participation in Drew's education.
There was evidence that the IEPs contained little or no progress reporting or measurement data and where progress was reported, it was "lacking in detail" or limited to "conclusory statements". However, the evidence also showed the parents were aware of their student's progress and were active participants in his education. There was "constant communication" between the parents and the student's special education teacher both through face-to-face meetings and a "back-and-forth notebook". The Court held that the ALJ did not err in concluding the gaps in the IEP progress reporting did not inhibit the parents from meaningful participation.

The Court did raise a concern by stating:

> In reaching this conclusion, we do not downplay the importance of regular and diligent progress reporting on IEPs. In a system built on the continuous revision of individualized plans meant to address disabled students' unique needs, data on what is or is not working for a student is crucial…. Thus, while we do not endorse the District's reporting in this case, without evidence that there was an impact on [the student's] education, we cannot say he was effectively denied a FAPE.

Endrew F. v. Douglas County School District 66 IDELR 31(United States Court of Appeals, 10th Circuit (2015)).

8. The Court concluded that the IEP for a student with autism was appropriate. Therefore, the parents' request for reimbursement for their private placement was denied.
   The parents argued that their student required one to one instruction from a full time special education teacher. The Court held that the IEP which called for placement in a class with 6 students, a special education teacher, a classroom paraprofessional and a full time individual behavior management paraprofessional would likely produce progress. Therefore, a FAPE was offered. The Court also addressed the allegation that the IEP goals lacked specificity and measurability. Any vagueness in the 17 goals was ameliorated by the specificity of the 96 short term objectives. The objectives provided considerable detail as to how the broader goals would be implemented and measured. D.A.B. v. New York City Department of Education 66 IDELR 211 (United States Court of Appeals, 2nd Circuit (2015)). Note: This is an unpublished decision.

9. The parents of a student with autism rejected the IEP offered and placed the student in a private school. The parents then initiated a due process hearing seeking reimbursement.
   After the IEP was developed the parents visited the school that the student would be attending. The school's social worker served as the school's "tour guide". There was conflicting testimony as to what was said on the tour. The parents alleged that they were told that the proposed school did not have the requisite staff or services called for in the IEP. The social worker disagreed with the parents version of what was said. The Court upheld the conclusion of the hearing officer, who found that social worker's testimony more credible, since a hearing officer is in the best position to assess the

credibility of the witnesses.

The Court concluded that the evidence "sufficiently demonstrated" that the proposed placement had the ability to fully implement the IEP despite any misinformation provided to the parents. B.P. v. New York City 66 IDELR 272 (United States Court of Appeals, 2nd Circuit (2015))

10. The parents of a student with "autistic-like behaviors", a specific learning disability and a speech and language impairment challenged the IEPs developed for their student by requesting a due process hearing.

    The Court, in affirming and accepting the District Court's "very careful and well reasoned decision", held that the behavioral component in the IEP was properly implemented in school. Also, when the student was placed in home instruction for a four week period when the parent and members of the IEP Team were considering changes to the student's placement, the school was not obligated to provide the behavioral services in the IEP. As the District Court noted "The Plaintiff cites no authority, and the Court is aware of none, for the proposition that the IDEA required the District to transplant the entirety of the services offered in plaintiff's IEP, which contemplated in-school instruction, to plaintiff's home environment during the interim periods…". Since the services were tied to a particular location (in-school) there was not a material failure to implement the IEP. C.L.v. Lucia Mar Unified School District 67 IDELR 136 (United States Court of Appeals, 9th Circuit (2016)). Note: This is unpublished decision.

C. Substantive Issues

1. A student who was disabled under the category other health impairment had IEPs for his kindergarten and 1st grade years. The parents objected to the 2nd grade IEP developed since it did not provide the student a one to one aide, extended school services or have a full time nurse assigned to the school.

   The parents initiated a due process hearing. The hearing officer found the IEP was appropriate. The District Court affirmed the hearing officer.

   On appeal, the parents argued that the District Court did not use the correct legal standard in determining whether the IEP offered a FAPE. The parents contended that the 1997 and 2004 statutory amendments to the IDEA replaced the FAPE standard in the Rowley decision of the Supreme Court. They argued that the correct standard is now "meaningful" rather than "some" educational benefit.

   The Court of Appeals affirmed the District Court. In doing so, the

Court held that the correct standard is "some educational benefit" which has always meant more than mere minimal or trivial progress. When Congress amended the IDEA the definition of FAPE was not changed.

The Court also affirmed the holding that the IEPs provided the student a FAPE. All who testified, except the parents, opined that the student made progress. Although the student at times regressed, an expert testified that the regression at least in part was due to the extensive absences of the student from school. (30 full school days and part of 20 additional school days in 1st grade.) O.S. v. Fairfax County School Board 804 F.3d 354, 66 IDELR 151 (United States Court of Appeals, 4th Circuit (2015))

Note: The Court observed that other courts "explicitly hold that the IDEA as amended requires school districts to meet a heightened standard" than "some" educational benefit citing N.B. v. Hellgate 541 F.3d 1202 (United States Court of Appeals, 9th Circuit (2008)). However, the 9th Circuit in a subsequent case, J.L. v. Mercer Island School District 592 F.3d 938 (2010) stated:

> Some confusion exists in this circuit regarding whether the Individuals with Disabilities Education Act requires school districts to provide disabled students with "educational benefit," "some educational benefit" or a "meaningful" educational benefit. ...As we read the Supreme Court's decision in *Rowley*, all three phrases refer to the same standard. School districts must, to "make such access meaningful," confer at least "some educational benefit" on disabled students. *See Rowley*, 458 U.S. at 192, 200. For ease of discussion, we refer to this standard as the "educational benefit" standard.

2. The parents challenged the appropriateness of their student's IEP. In doing so, the parents' contended that the 10th Circuit shifted the standard for measuring the substantive appropriateness of an IEP, that is, whether the IEP is "reasonably calculated to enable the child to receive educational benefits." The parents argued that the Court in Jefferson County School District v. Elizabeth E., 702 F.3d 1227 (10th Circuit 2012) abandoned the "some educational benefit" standard previously articulated in 10th Circuit cases (and applied by the ALJ and the district court) in favor of a heightened "meaningful educational benefit" standard.

The Court rejected the argument that the educational benefit standard has changed. The Court noted that the 10th Circuit has long subscribed to the Rowley Court's "some educational benefit" language in defining a FAPE and interpreted it to mean that "the educational benefit mandated by IDEA must merely be 'more than de minimis.'" Therefore, the Court held that it was bound by that standard "absent en banc reconsideration or a superseding contrary decision by the Supreme Court."
Applying the standard to the facts of this case, the Court concluded that the ALJ's findings of progress were supported by the evidence and were sufficient to show that the student received some educational benefit under both his academic and functional goals. Endrew F. v. Douglas County School District 66 IDELR 31(United States Court of Appeals, 10th Circuit (2015)).

3. The parents of a student with autism were reimbursed for their unilateral placement in a private special education school by a hearing officer. The school used a teaching methodology known as DIR/Floortime. [Note: DIR/Floortime is a form of play therapy that uses interactions and relationships to reach children with developmental delays and autism. Floortime is based on the theory that autism is caused by problems with brain processing that affect a child's relationships and senses, among other things. It strongly emphasizes social and emotional development. Autism Web: A Parent's Guide to Autism Spectrum Disorders]
The school district developed an IEP for the following school year which called for placement in a special class for students with autism in a public school that offered year round services. Many of the goals in the IEP came from a report created by the private special education school. However, the IEP does not require that DIR/Floortime be used to implement the goals.
The hearing officer, state review officer and District Court held that the IEP was appropriate. The Court of Appeals vacated the decision and remanded the matter for further consideration of whether the IEP was appropriate without adopting the methodology from the private school.
The Court noted that:

> We have held that, because of their specialized knowledge and experience, state administrators are generally superior to federal courts at resolving "dispute[s] over an appropriate educational methodology....That deference is warranted, however, only if the state administrators weigh the

evidence about proper teaching methodologies and explain their conclusions.

In this case, neither the hearing officer nor state review officer determined whether the "DIR/Floortime" methodology was necessary to implement the goals in the IEP even though it was listed as an issue in the due process complaint. The general conclusion that the IEP was "sufficient to address the student's demonstrated needs," was no replacement for a direct evaluation of the evidence on teaching methodology.

The Court concluded that a "failure to consider any of the evidence regarding ... methodology ... is precisely the type of determination to which courts need not defer." E.H. v. New York City Department of Education 611 F.Appx. 728, 65 IDELR 162 (United States Court of Appeals, 2nd Circuit (2015)) Note: This is an unpublished decision.

4. A high school student was "twice exceptional" being both academically gifted and IEP eligible. The student, who was diagnosed with Asperger's Syndrome, obsessive compulsive disorder, mood disorder, adjustment disorder and Tourette's syndrome, had a 1:1 paraprofessional and attended general education classes (including advanced placement classes) for the majority of her day. Her GPA was above 4.0 due to her advanced placement courses.

The student was raped over Christmas vacation of her sophomore year while the family was on vacation. The parents and school agreed to postpone the annual review of her IEP scheduled for January and instead developed an interim IEP with several accommodations to ease her transition back into school after the rape. That spring the student had experienced some inappropriate social and physical interactions with other students. In addition, although she auditioned for the school choir, she was not selected. The parent requested an IEP Team meeting where she spent a good portion of the time advocating for her daughter to be put on the choir. When the Team refused the request, the student was withdrawn from school and placed in a private special education school out of state. A due process hearing was requested.

The Court, in affirming the ALJ, held that the IEP provided the student with a FAPE. First, the Court rejected the argument that FAPE was denied since the annual IEP review did not take place since the parent agreed to the course of action. Second, the Court found that each incident of bullying that was reported was promptly investigated and resolved. Lastly, the Court noted the student was making academic progress and had a better attendance record. The IEP Team worked closely with the student's

medical/mental health team and implemented their recommendations for the student. Sneitzer v. Iowa Department of Education 66 IDELR 1 (United States Court of Appeals, 8th Circuit (2015))

5. The parents of a student with a speech and language impairment rejected an IEP that proposed moving their student from a class co-taught by a regular education and special education teacher to a self-contained classroom. The parents received prior written notice identifying the school to which the student would be assigned. The parent wanted to visit the school but was unable to do so since the school was closed for the summer.

   The parents made a unilateral private school placement and initiated a due process hearing seeking reimbursement. The parent was the only witness who testified about the proposed placement and felt her student "would shut down completely" if placed there. The school district did not present evidence that the proposed placement would be able to implement the IEP as written. The Court, in referencing one of its prior decisions in R.E. v. New York City (2012), stated that whether a FAPE is offered must be based on an evaluation of the written IEP and that "speculation that the school district would not adequately adhere to the IEP is not an appropriate basis for a unilateral placement."

   The Court found that the District Court appeared to have erroneously held that a student must physically attend a proposed placement before challenging the school's ability to implement the IEP. It is not speculative to find that an IEP cannot be implemented at a proposed placement that lacks the services required by the IEP. However, the Court upheld the appropriateness of the IEP. The issues raised in the due process complaint (size of the school, student-teacher ratio, the appropriateness of the language based program, etc.) were not prospective or speculative challenges to the school's ability to provide the IEP services. The issues were substantive challenges to the IEP and placement itself. Based on the evidentiary record the IEP would have provided the student with a FAPE. M.O. v. New York City Department of Education 793 F.3d 236, 65 IDELR 283 (United States Court of Appeals, 2nd Circuit (2015)).

   In a subsequent decision citing the M.O. case, the Court held that the parents' allegation that their student with autism would have been placed in a classroom with "an inappropriate grouping of students" was retrospective evidence barring it from being considered. This issue is distinct from a challenge on the school's actual or non-speculative ability to implement the IEP which is a proper issue for consideration. J.C. v. New York City Department

of Education 116 LRP 10230 (United States Court of Appeals, 2nd Circuit (2016)). Note: This is an unpublished decision.

6. The United States Department of Education issued a guidance letter stating that an IEP "must be aligned with the State's academic content standards for the grade in which the child is enrolled" (emphasis added) in order to have meaningful access to the general curriculum.
However, the Department recognized that this alignment must guide but not replace the IEP Team's individualized consideration of the student. The Department's guidance further stated:

> In a case where a child's present levels of academic performance are significantly below the grade in which the child is enrolled, in order to align the IEP with grade-level content standards, the IEP Team should estimate the growth toward the State academic content standards for the grade in which the child is enrolled that the child is expected to achieve in the year covered by the IEP. In a situation where a child is performing significantly below the level of the grade in which the child is enrolled, an IEP Team should determine annual goals that are ambitious but achievable. In other words, the annual goals need not necessarily result in the child's reaching grade-level within the year covered by the IEP, but the goals should be sufficiently ambitious to help close the gap.

In addition, for students with significant cognitive disabilities the IEP Team may determine that the student's performance will be measured against alternate academic achievement standards. Such standards must still be aligned with that State's grade level content standards, however, they may be restricted in scope or complexity or take the form of introductory skills. Dear Colleague Letter 66 IDELR 227 (United States Department of Education, Office of Special Education and Rehabilitative Services (2015)).

7. The parents of a student with a disability initiated a due process hearing challenging their student's IEP. The parents contended that the IEP was inappropriate since they felt their student was autistic but was deemed to be OHI, emotionally disturbed and learning disabled by the school district.

The hearing officer concluded that FAPE was denied and ordered the student placed at public expense in a private day school.
The Court, based on recommendations from the Federal Magistrate, held that the IEP was inappropriate "for failing to account for [the student's] autism spectrum disorder and its impact on his educational needs". However, the Court accepted the Magistrate's recommendation that the hearing officer's order placing the student in a private school was not supported by the evidence.
The Court ordered the parties to meet and develop a new IEP that identifies the student as autistic in addition to OHI and LD. School Board of the City of Suffolk v. Rose 66 IDELR 137 (United States District Court, Eastern District, Virginia (2015)).

IV. Related Services/Assistive Technology

A. The United States Supreme Court Decision – Irving Independent School District v. Tatro, 104 S. Ct. 3371, IDELR 555:511 (1984).

1. The United States Supreme Court established a three-prong test for determining whether a particular service is considered a related service under the IDEA. To be entitled to a related service:

a) A child must have a disability so as to require special education under the IDEA;

b) The service must be necessary to aid a child with a disability to benefit from special education; and

c) The service must be able to be performed by a non-physician.

B. The parents of an 8 year old student with autism initiated a due process hearing alleging that FAPE was denied in particular regarding the students communication needs. The hearing officer agreed and ordered compensatory education.
The parents provided testimony that they used an iPad (with the Proloquo2Go application) to communicate with the student successfully at home which reduced her problematic behaviors. The school testified that they did not find that to be the case in school and felt that when she used the iPad it did not improve her communication skills. The school stopped using the iPad application and started using the Picture Exchange Communication System (PECS). The evidence showed that there had been "inconsistent and limited progress" under the student's IEP communication goals.
The Court held that the student was denied a FAPE. The Court stated

"Despite widespread agreement that [the student] used behaviors to communicate when other avenues are unavailable, and that [the student] had more success with assistive technology outside of school, the District failed to take affirmative measures to determine why [the student] did not exhibit those successes at school. '[I]t is the responsibility of the child's teachers, therapists, and administrators -- and of the multi-disciplinary team that annually evaluates the student's progress -- to ascertain the child's educational needs, respond to deficiencies, and place him or her accordingly.'" North Hills School District v. M.B. 65 IDELR 150 (Pennsylvania Commonwealth Court (2015)).

C. OSEP issued a letter to the field raising concerns that based on reports it received a growing number of children with an autism spectrum disorder (ASD) may not be receiving needed speech and language services. They also raised a concern that speech-language pathologists and other appropriate professionals may not be included or their input obtained in evaluation, eligibility and IEP/IFSP meetings. OSEP stated "Some IDEA programs may be including applied behavior analysis (ABA) therapists exclusively without including, or considering input from, speech language pathologists and other professionals who provide different types of specific therapies that may be appropriate for children with ASD when identifying IDEA services for children with ASD." The letter reminds schools that "ABA therapy is just one methodology used" to address the needs of children with ASD and that Team decisions regarding services must be based on the unique needs of each individual child with a disability. Dear Colleague Letter 66 IDELR 21 (United States Department of Education, Office of Special Education Programs (OSEP) (2015)).

D. A high school student who was deaf used a hearing aid and the IEP called for an FM system which did not consistently work. The student was able understand about 40% of what was being said and relied on lip reading and facial expressions to communicate.
In addition to procedural violations (an example being the lack of measureable goals), the Court, in affirming the hearing officer, concluded the student was denied a FAPE since the IEP did not provide appropriate assistive technology services such as Communication Access Realtime Translation (CART) or other similar speech to text technology as recommended by two outside evaluators.
The Court rejected the school's argument that the hearing officer erred in his legal analysis by using a standard from the Americans With Disabilities Act (ADA). The hearing officer's discussion of law was based on the FAPE standard as articulated in the Rowley decision. DeKalb County Board of Education v. Manifold 65 IDELR 268 (United States District Court, Northern District, Alabama (2015)).

E. A student with "profound physical and intellectual disabilities" also has a

chronic epileptic seizure disorder. His doctor prescribed drug treatment (Diastat) which needs to be administered rectally "without delay" if his seizure lasts for more than five minutes to avoid a life threatening condition.

The student's health plan provided for the administration of the medication if the student has a seizure lasting more than five minutes at school. Although the student never had a seizure lasting more than five minutes at school or on the school bus, his seizures increased in frequency and duration.

The school adopted a bus policy which stated that if the student had a seizure on the special education school bus the driver would call 911 and proceed to either the school or the student's home whichever was closer. The policy allowed for an exception if the student's doctor provided sufficient information. In this case, the parent refused to sign a release to allow the school to speak with the student's doctors. All of the school's questions were to go through the parent and the parent would let the school know what the doctor stated.

The Court found that the student was denied a FAPE since the IEP did not include a trained bus aide to accompany the student. However, the aide need not administer the medication unless the school bus could not reach either the student's home or school within five minutes after the seizure begins without additional information from the student's doctors. Oconee County School District v. A.B. 65 IDELR 297 (United States District Court, Middle District, Georgia (2015)).

V. Placement/Least Restrictive Environment

A. The parents of a student with autism who posed significant behavioral problems in school were offered placement in an approved private special education school by the school district. The parent rejected the offer and initiated a due process hearing.

The hearing officer ordered that the student shall be referred to a Team "which will consider all options for the student's placement, including non-approved non public schools."

The Court overturned the hearing officer's order. Unlike a case where the parents are seeking reimbursement for a private school placement they made, under the IDEA the placement by a school district in a private special education school must be in a school approved for special education by the state. A FAPE is defined by the IDEA as special education and related services that "meet the standards of the state education agency." Therefore, a hearing officer's order directing the school district to consider placing the student in a non-approved school was contrary to the IDEA. Z.H. v. New York City Department of Education 65 IDELR 235 (United States District Court, Southern District, New York (2015))

B. The IEP Team for a pre-schooler with autism changed the student's placement from a special education pre-school class to a pre-school collaborative classroom based on the parents' request. The parents believed their student needed a general education class placement. Based on an Independent Educational Evaluation obtained by the parents they unilaterally placed their student in a private preschool, and began paying a 1:1 behavioral aide. They then initiated a due process hearing to obtain reimbursement for the costs associated with their private placement and behavioral aide.

The Court, in affirming the District Court and Administrative Law Judge, concluded the IEP's placement offered the student a FAPE in the least restrictive environment. The Court found that the IEP was both procedurally and substantively appropriate.

Procedurally, the school provided a continuum of placement options including programs with peers who are not disabled, provided the parents with a meaningful opportunity to participate in the IEP development and did not predetermine placement.

The Court, in applying the factors of the Holland decision (the educational and non-academic benefits to the student if placed in a general education and the effect on the teacher and classmates if the student was placed in general education) , concluded that the substantive requirements of the IDEA were met.

The Court affirmed the findings of the lower court and ALJ which stated that the legal analysis must focus primarily on the IEP's proposed placement, not on the alternatives that the parents may have preferred. The findings cited the testimony of the child's former special education teacher who opined that the student would need the constant assistance of the aide in a regular preschool which would create dependence. In addition, the other experts similarly expressed the opinion that the student was not yet ready for a regular preschool class setting. A.R. v. Santa Monica Malibu School District 116 LRP 618 (United States Court of Appeals, 9th Circuit (2016)). Note: This is an unpublished decision.

C. The IEP for a student with a disability changed the student's placement for the receipt of reading, writing and math instruction. The reading instruction was moved from a resource classroom to an "Intense Academic Program" classroom.

The parents' request to visit the proposed classroom with other students present was denied by school district based on confidentiality concerns. The parent declined the school's invitation to visit the classroom when no other students were present.

A due process hearing was requested raising 8 issues. The hearing officer, finding for the school district on 7 issues, concluded that the IEP provided the student a FAPE. However, he did find that the refusal to allow the classroom visit was a procedural violation "that inhibited [the parents'] ability to participate in the IEP process".

The parents then initiated an action for attorney's fees with a counterclaim filed by the school district seeking a reversal of the hearing officer's finding.
The Court held that the hearing officer's finding was in error. There is no specific right to view a proposed placement under the IDEA. An OSEP letter that addressed the issue stated that such determinations may be addressed by State and/or local policy. The OSEP letter further encourages the parties to work together including opportunities for parents to observe their children's classrooms and proposed placements. In this case, the Court found that the school had done so by offering an observation when no other students were present.
Since the school prevailed on all 8 issues, the parents were not deemed prevailing parties for the purposes of attorney's fees. John and Maureen M. v. Cumberland Public School 65 IDELR 231 (United States District Court, Rhode Island (2015))

VI. Unilateral Placements

A. The United States Supreme Court in Burlington, MA v. Department of Education et al., 105 S. Ct. 1996, IDELR 556:389 (United States Supreme Court (1985), held that parents may be awarded reimbursement of costs associated with a unilateral placement if it is found that:

1. The school district's IEP is not appropriate;

2. The parent's placement is appropriate; and

3. Equitable factors may be taken into consideration

B. Parental placement at a school which is not state approved or does not meet the standards of the state does not itself bar public reimbursement under the Burlington standard if the placement is "proper". Florence County School District Four et al. v. Carter, 114 S. Ct. 361, 20 IDELR 532 (United States Supreme Court (1993)).

C. The parents of a student with autism and the school district agreed to a publicly funded private school placement in 2006. In 2008, the parents who were now dissatisfied with that private school moved their student to a religiously affiliated private school without special education services. The IEP for the 2008-2009 school year stated that the parents would pay tuition for that school and the school district would provide reading instruction, OT, PT, and speech services to be provided by private providers outside of class.
The IEP for the 2009-2010 school year offered a public placement rejected by the parents. The parents kept their student in the religious private

school and paid for some (but not all) of the services the public school had previously paid for. The parents initiated a due process hearing in April 2010. No further IEPs were developed for the student.
The hearing officer denied reimbursement. The District Court affirmed but held that public school violated the "stay put" requirement and ordered reimbursement of the parent's out of pocket expenses in paying for the extra services stated in the 2008-2009 IEP.
The Court of Appeals affirmed the denial of reimbursement for tuition finding that the IEP was both procedurally and substantively appropriate. Although the school violated the IDEA by not offering any IEP after the 2009-2010 school year, the Court held that the parents were not entitled to tuition reimbursement since the private school was not appropriate.
The Court however held that the school district violated its stay put obligations. It ordered reimbursement from the date that the parent requested a due process hearing for the actual amount of services the parent had privately paid for. In addition, the Court ordered compensatory education for any of the appreciable differences between the full services called for in the 2008-2009 IEP (the last IEP implemented) and the actual reimbursed services the parents paid for. Doe v. East Lyme Board of Education 790 F.3d 440, 65 IDELR 255 (United States Court of Appeals, 2nd Circuit (2015)).

D. The parents of a student who is emotionally disturbed unilaterally placed their student in a residential treatment facility before a scheduled IEP Team meeting was convened to discuss the student's academic, behavioral and anxiety needs.
The IEP Team did not agree to place the student in a residential facility. The parents subsequently placed the student in private school and sought reimbursement by requesting a due process hearing.
The parties settled the dispute. The school agreed to reimburse the parents for tuition for the 9th grade and fall semester of the 10th grade. The parents agreed to give the school 30 days notice if they intended to re-enroll their student in the school. The parents provided such notice in November of the 10th grade year.
The school convened an IEP Team meeting in December. The parents and their advocate were involved in the discussion and many of their suggestions were incorporated into the IEP although the IEP was not yet finalized. At the end of the meeting the parents stated that they wanted their student to remain at the private school and possibly take a class or two at the public school to ease her way back in.
After several attempts to schedule another IEP Team meeting to finalize the IEP the parents responded that there was no need for any further Team meeting unless the Team would agree to place the student in the private school. No further IEP Team meeting was held.
The parents initiated a due process hearing seeking reimbursement for the private tuition for the student's second semester in 10th grade. The hearing

officer ordered reimbursement. The District Court reversed finding that the school complied with both the procedural and substantive IDEA requirements.
The Court of Appeals denied reimbursement on the grounds that the parents' actions were unreasonable. The IDEA provides that private tuition "may be reduced or denied…upon a judicial finding of unreasonableness with respect to the actions taken by the parents". (20 U.S.C. 1412(a)(10)(C)(iii)(III)) In so holding, the Court stated:

> In sum, the record indisputably reveals that the parents adopted an "all-or-nothing" approach to the development of [the student's] IEP and that they thereby adamantly refused to consider any of [the school district's] alternative proposals that did not involve [the student] remaining at the [private school] for the spring 2012 semester. As the district court supportably found, the parents' actions "broke down" the IEP-development process, resulting in an incomplete IEP for [the student] for the spring 2012 semester. We conclude that the parents' actions, well-intentioned as they may have been, constituted an unreasonable approach to the IEP-development process, rather than the collaborative or interactive approach envisioned by the IDEA.

Rockwall Independent School District 116 LRP 9727 (United States Court of Appeals, 5th Circuit (2016)).

VII. Behavior and Discipline

A. The parents of a student with autism challenged the appropriateness of their student's IEPs on several grounds. Regarding behavior, the parents alleged the IEPs were legally deficient since they failed to adequately address his behavior since the school did not conduct a functional behavioral assessment or implement a behavior intervention plan.
The Court upheld the IEPs holding that the alleged failure to conduct a functional behavioral assessment or develop a behavior intervention plan did not violate the IDEA. The IDEA only requires a school district to conduct an FBA or to implement a behavior plan if there is a disciplinary change of placement which was not the case here. Absent a disciplinary change of placement, the IDEA requires the IEP Team to "consider the use of positive behavioral interventions and supports and other strategies" if behavior is impeding the student's learning or that of others. The evidence supported the conclusion that the Team considered the student's behavioral issues with interventions and was in the process of reassessing his behavior interventions when the student was withdrawn from school. Endrew F. v. Douglas County School District 66 IDELR 31 (United

States Court of Appeals, 10th Circuit (2015)).

B. A student with a disability was found to be consuming illegal drugs with a staff member while in the school. The student was suspended for 10 school days while awaiting an expulsion hearing in front of the school board. Before the hearing, the student had criminal charges filed against him. The student entered into a plea agreement where he admitted to possessing a controlled substance, agreed to cooperate with the school's investigation of the staff member and agreed to forfeit his appeal of his expulsion from the school.

A manifestation determination was made where it was decided that there was no manifestation between his disability and his misconduct. The school told the student and his parents that he would be attending an alternative school that specializes in providing services to students with disabilities that have behavioral issues. The parents requested that other options be considered but none were offered. The parents refused to have their student enroll in the alternative school. The school then initiated truancy proceedings in state court.
The student then initiated proceedings in federal court alleging his constitutional rights to due process had been violated. The Court dismissed the proceedings. In doing so, the Court held "an entitlement to public education does not include the right to attend a particular school" and a student's transfer from a regular high school to an alternative school does implicate the constitutional right to due process. Alex K. v. Freedom Area School District 66 IDELR 130 (United States District Court, Western District, Pennsylvania (2015)). Note: This case was filed under Section 1983 raising constitutional issues and was not decided under the IDEA provisions.

VIII. Harassment/Bullying Issues

A. The United States Department of Education's Office of Special Education and Rehabilitative Services (OSERS) issued a letter providing an overview of a school district's responsibilities under the IDEA to address bullying of students with disabilities. Although there is no federal law addressing bullying , the Department defines bullying as:

> Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time. Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (e.g., excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range

> from blatant aggression to far more subtle and covert behaviors. Cyberbullying, or bullying through electronic technology (e.g , cell phones, computers, online/social media), can include offensive text messages or e-mails, rumors or embarrassing photos posted on social networking sites, or fake online profiles.

The Department emphasized that bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA whether or not the bullying is related to the student's disability. The denial of FAPE must be remedied.

The school should, as part of its appropriate response to the bullying, convene the IEP Team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the IEP is no longer designed to provide meaningful educational benefit. If the IEP is no longer designed to provide a meaningful educational benefit to the student, the IEP Team must then determine to what extent additional or different special education or related services are needed to address the student's individual needs; and revise the IEP accordingly. The IDEA placement team (usually the same as the IEP Team) should exercise caution when considering a change in the placement or the location of services provided to the student with a disability who was the target of the bullying behavior and should keep the student in the original placement unless the student can no longer receive FAPE in the current LRE placement.

If the student who engaged in the bullying behavior is a student with a disability, the IEP Team should review the student's IEP to determine if additional supports and services are needed to address the inappropriate behavior. In addition, the IEP Team and other school personnel should consider examining the environment in which the bullying occurred to determine if changes to the environment are warranted. Dear Colleague Letter 61 IDELR 263 (United States Department of Education, Office of Special Education and Rehabilitative Services and the Office of Special Education Programs (2013)).

B. A student with a disability was placed in a general education class taught by both a general and special education teacher. The student also had a one to one itinerant teacher. Starting in the third grade, the student was subjected to both verbal and physical bullying on a nearly daily basis. The parents contacted the student's teachers and administrators expressing their concern. They received no response. The parents also tried to raise the issue of bullying twice at IEP meetings but were told by the principal it was not an appropriate issue for discussion. The parents unilaterally placed their student in a private special education school and initiated a due process hearing seeking reimbursement.

The Court held that FAPE was denied based on the fact that the IEP Team

refused to discuss the issue of bullying. The school district's "persistent refusal to discuss [the student's] bullying at important junctures in the development of her IEP significantly impeded [the parents'] right to participate in the development" of the IEP.

The Court stated that since the decision was based on a procedural violation it was not deciding the issue of whether the bullying was so severe that there was a substantive denial of FAPE. In addition, the Court expressed no opinion whether the District Court's test for determining when bullying results in a denial of FAPE was a correct one under the IDEA.

After finding that the private school was appropriate, the Court ordered that the parents were entitled to be reimbursed. T.K. v. New York City 810 F.3d 869, 67 IDELR 1 (United States Court of Appeals, 2nd Circuit (2016)).

C. The United States Department of Education issued a guidance letter which clarifies that a school is allowed to share some information regarding the outcome of the school's investigation of a harassment complaint with the parent of the student who had been subjected to harassment without violating FERPA. The Department stated that "the Department has long viewed FERPA as permitting a school to disclose to the parent of a harassed student (or to the harassed student if 18 or older or in attendance at a post-secondary institution) information about the sanction imposed upon a student who was found to have engaged in harassment when that sanction directly relates to the harassed student."

The letter shares examples of disciplinary sanctions which directly relate to a harassed student which include, but are not limited to: "an order that the harasser stay away from the harassed student" and an order "that the harasser is prohibited from attending school for a period of time, or transferred to other classes." Letter to Soukup 115 LRP 18668 (United States Department of Education, Family Policy Compliance Office (2015))

D. The parent requested access to her student's educational records as provided for under FERPA. The school provided physical access to all records except for a harassment investigation report which contained personally identifiable information of multiple students. The school offered to meet with the parent and inform her of the specific information in the report involving her student. The parent filed a complaint against the school.

The United States Department of Education concluded that the school did not violate FERPA. There is a limit on a parent's right to inspect and review their student's educational records when a record contains information on other students.

The Department stated:

> When education records contain information about

> more than one student, the parent may inspect, review, or be informed of only the specific information about his or her children. 34 CFR § 99.12(a). A school district should accordingly redact the names of, or information which would be personally identifiable to, any other students mentioned in the education record before providing a parent access to the student's education records. In cases where joint records cannot be easily redacted or the personal identifiable information omitted, the school district may satisfy the parental request for access by informing the parent about the contents of the specific record in question.

Letter to Prescott 115 LRP 39435 (United States Department of Education, Family Policy Compliance Office (2015))

E. The parents of a student with autism were told by other students that their student was verbally and physically bullied on the school bus with no one intervening. The student would go into a fetal position with his head under a pillow when asked about the incidents. The parents then initiated legal action against the school district to be provided access to video tapes that were recorded on the bus.
The Court held that the parents must be given access to the tapes even though the tapes are considered educational records under the Family Educational Rights and Privacy Act (FERPA). There was a "good faith basis" for the parents' belief that the videos are necessary for the determination of what claims, if any, they have against the school district. FERPA provides for the disclosure of educational records without parent consent if "such information is furnished in compliance with a judicial order". (20 U.S.C. 1232g(b)(2)). The Court ordered, in compliance with FERPA requirements, that prior to providing the tapes to the parents of the student victim that the parents of the other students on the tape be notified of the court ordered disclosure. Goldberg v. Regional School District #18 115 LRP 34551 (Connecticut Superior Court (2015)).
Note: The FERPA provision cited by the Court refers to "judicial orders" and does not reference special education hearing officers.

F. A high school student with ADHD and a nonverbal learning disability was verbally and physically harassed at school by other students. The student was insulted by homophobic slurs.
The parents, one of whom was employed by the school, reported the incidents to the school. They also repeatedly emailed the principal with their concerns. The principal responded but not always to the satisfaction of the parents.
After the student had graduated, the student and his parents sued the

school district alleging violations of Section 504 and the ADA. The lawsuit alleged that the district discriminated against the student based on his disability by failing to prevent their student from being harassed. The Court held that in order to prevail the student and parents needed to prove: (1) the student was an individual with a disability; (2) he was harassed by fellow students based on his disability; (3) the harassment was sufficiently "severe, pervasive, and objectively offensive" that it effectively prevented him from access to the educational benefits/opportunities at school; (4) the school knew about the harassment; and (5) the school was "deliberately indifferent" to it.
The Court first raised doubts whether the harassing conduct was based on his disability. Even if it was, the Court concluded that the school was not deliberately indifferent. The school investigated each reported incident and used disciplinary measures such as warnings, parent conferences, detentions and suspensions against the offending students. The school also assigned a paraprofessional to follow the student during the school day to monitor his safety. A school is not held to the legal standard of eliminating student on student harassment. The Court therefore granted a motion for summary judgment for the school district. S.B. v. Board of Education of Harford County 116 LRP 13691 (United States Court of Appeals, 4th Circuit (2016))

IX. Due Process Issues

A. Due Process Hearing Complaint Requests

1. The parents of a student with autism rejected the IEP offered and placed the student in a private school. The parents then initiated a due process hearing seeking reimbursement.
   In the due process complaint, a letter from the parents to the school district was referenced. The parents contend that the letter provided sufficient notice to the school district of all of their concerns. The Court, in upholding the District Court, found that the letter which was cross referenced in the complaint was inserted "primarily as part of a chronology of events, not as an issue requiring resolution". Therefore, the Court found no error in the State Hearing Officer's and District Court's decision not to address the six claims that were in the letter but not expressly raised in the due process complaint. B.P. v. New York City 66 IDELR 272 (United States Court of Appeals, 2nd Circuit (2015))

B. Stay Put

1. A student with autism was attending a private special education school pursuant to his IEP which was ending on June 30,2015. The family moved to a neighboring district where the parents met with

the new district to determine an interim placement. The interim placement was at the public school district's middle school which the parents disagreed with. The parents initiated a due process hearing on June 18.

The Court, in overturning the ALJ, held that the private special education school was the "stay put" placement which became the responsibility of the new school district while the matter was pending. The Court rejected the new school district's argument that "stay put" does not apply when a family transfers to a new school district. The Court held that "The goal of the right to "stay put" -- "to protect students from changes to their educational programs when there is a dispute over the lawfulness of the changes," ....would be subverted if the new school district's interim services offer were deemed the student's "then-current educational placement." D.G. v. San Diego Unified School District 66 IDELR 167 (United States District Court, Southern District, California (2015)). Note: The Court cited the Ms. S. v. Vashon Island School District decision from the 9th Circuit in 2003 as a basis of its decision. The IDEA was amended after that decision to add a provision requiring the new school district to provided "comparable services" to the student with a disability who transfers to a new school district during the same academic year.

2. A student with a disability was placed by his IEP Team in a private out of district special education school. The family then moved to another school district within the same state and provided the new school district the student's IEP. The staff from the new school district met with the parents and offered "comparable services" within the new school district's programs.

   The parents filed a due process hearing request. They immediately sought an order from the administrative law judge (ALJ) under the "stay put" provision which would require the new school district to fund the student's program and provide transportation to the private special education school while the hearing was pending. The ALJ denied the parents' request concluding that the offer of services in the new school district's program was comparable to those provided by the private school. The District Court affirmed. The Court of Appeals noted that the IDEA requires, in cases of intra-state transfers, the new school district consult with parents and offer comparable services. The Court held that when parents unilaterally move to a new school district within the same state, the "stay put" provision is inoperative since the IDEA's transfer provisions applies. J.F. v. Byram Township Board of Education 66 IDELR 180 (United States Court of Appeals, 3rd Circuit (2015)). Note: This is an unpublished decision.

3. The parents of a high school student with Down Syndrome disagreed with the IEP developed for their student for the 2013-2014 school year. The parents then made a unilateral placement at a private special education school.

   As a result of a mediation session, an agreement was reached where the school district agreed to pay for the private placement until June of 2014. During the school year, the school district held several IEP Team meetings resulting in an IEP for the 2014-2015 school year which would have changed the student's placement to a public special education day school. The parents again disagreed with the IEP and kept their student enrolled in the private special education school.

   The parents then initiated a due process hearing and asked the Administrative Law Judge (ALJ) for an immediate order enforcing "stay put" which would require the school district to fund and maintain the student's placement in the private school while the due process proceedings were pending. The ALJ ruled that the student must remain in the private school under "stay put" but did not specifically order the school district to pay for that placement. The school district refused to pay for the "stay put" placement arguing that "[a]n 'order to stay' is not an 'order to pay.'" The parents then filed a Motion for a Preliminary Injunction with the Court asking for an order requiring the school district to fund the private school placement. The Court granted the Motion based on the ALJ's preliminary ruling that the private school was the student's current placement for "stay put" purposes.

   The Court observed in a footnote that the school district also argued that the mediation agreement did not obligate the district to pay for the 2014-15 school year. The Court agreed with that conclusion but noted that the parents were not relying on the mediation agreement in arguing their entitlement to tuition payments for the 2014-2015 school year. A.B. v. Baltimore City Board of School Commissioners 65 IDELR 10 (United States District Court, Maryland (2015)).

   The Administrative Law Judge subsequently issued a decision on the merits in March finding that the IEP developed for the student for the 2014-2015 school year provided a FAPE in the least restrictive environment. The school filed a Motion for Relief From the Preliminary Injunction Order regarding stay put. The Court denied the Motion finding that the equities required the public school to continue funding the private placement for the remainder of the 2014-2015 school year to avoid disrupting the student's education to a new placement at the end of the school year. A.B. v. Baltimore City Board of School Commissioners 65 IDELR 228 (United States District Court, Maryland (2015)). In a third ruling on "stay put" the Court extended its Injunctive Order beyond the

school year since the matter is pending before the Court. A.B. v. Baltimore City Board of School Commissioners 66 IDELR 40 (United States District Court, Maryland (2015)).

4. The parents of a student with a disability filed a due process hearing request alleging that their student was denied a FAPE. The hearing officer agreed and ordered the school district to contract with a private educational service within five days to provide training to staff and the parents and to provide ABA services to the student.
The parents filed a state administrative complaint alleging that the school district was not complying with the hearing officer's order. In the meantime, the school district filed an appeal to Court. In addition, the school district filed a Motion to Stay the Enforcement of the Order pending appeal.
The Court denied the Motion stating that the school district's motion would violate the "stay put" provision of the IDEA. Under "stay put", once the hearing officer agrees that a parent's proposed change of placement is appropriate that becomes the current educational placement during the pendency of the litigation. In this case, although the student remained in the public school, the Court applied this analysis ordering the school to pay for the private services pursuant to the "stay put" provision. Board of Education of the County of Boone v. K.M. 65 IDELR 138 (United States District Court, Southern District, West Virginia (2015)).

5. A student with a disability was placed pursuant to her IEP in an approved private special education school. Her IEP stated that the student should also attend some integrated classes in a private regular education school that shared classroom space with the private special education school. The State Department of Education did not approve the placement of IEP placed students in the integrated classes in the non-approved private regular education school. The Department issued a directive to the private special education school to not place IEP students in such integrated classrooms.
The parents of the student with a disability and the private special education school sued the State Department of Education. They challenged the Department's regulation regarding approval of private special education schools as being "arbitrary and capricious".
An issue was raised whether the "stay put" provision of the IDEA applied during the pendency of the lawsuit. The Court held, that although the parents did not first file for a due process hearing, the "stay put" provision applied since the lawsuit was a proceeding under Section 1415 of the IDEA. The Court stated that the due

process hearing system would be unable to grant the relief sought and therefore exhaustion of administrative remedies was not required. D.M. v. New Jersey Department of Education 115 LRP 42807 (United States Court of Appeals, 3rd Circuit (2015)).

6. The parents of a student with autism and the school district entered into a settlement agreement which called for three independent consultants to evaluate the student and recommend a program. The parties agreed that they would be bound by the recommendation of the consultants regarding an appropriate special education program and placement. While the agreement was being implemented, the school district agreed to fund the student's home based program. An IEP was then developed for the school year based on the consultants' recommendations. The IEP called for the student to be placed in a public school within the district with special education services provided. The parents rejected the IEP.

   The parents initiated a due process hearing seeking reimbursement of their home based program and placement in an out of state school. The hearing officer found that the IEP offered the student a FAPE.

   The parents contended that under the "stay put" rule, the school was obligated to continue to fund the home based program during the pendency of the due process hearing and appeal. The Court observed that generally the "stay put" placement is the last unchallenged IEP; however, if there is an agreement between the parties relative to placement during the proceedings, the agreed upon placement can supercede the prior unchallenged IEP as the then current placement.

   The Court held that the settlement agreement to reimburse for home-based education did not constitute the prior placement for purposes of triggering the stay-put obligation. The agreement was expressly limited in duration, conditioned upon the parents agreement to accept the recommendations of the independent consultants, and had not been approved by the school or ordered by a hearing officer as an appropriate placement. Further, the school district's contractual duty to reimburse for home-based education ceased after the parents rejected the independent consultants' recommended IEP for their student. Dervishi v. Stamford Board of Education 66 IDELR 6 (United States District Court, Connecticut (2015)).

7. A 19 year old student who has a traumatic brain injury was placed in an out of state residential school by the IEP Team. The parent initially agreed but felt that the school was unsafe and brought the student back to his home. An IEP meeting affirmed the out of state residential school was the only option for the student in order that

he receive a FAPE.

The student started to receive some services at a regional center near his home but it was not deemed the IEP placement. While there the student's annual IEP date passed and no annual IEP meeting took place. The parent refused to allow the student to return to school and requested a due process hearing.

The ALJ held that the IEP calling for residential placement was appropriate. The parent appealed to Court. While the appeal was pending the parent filed a Motion for Stay Put.

The Court held that stay put is the last implemented IEP. Since the last implemented IEP, although now out of date, was the one placing the student in the out of state residential placement the Court held it was the stay put placement. The Court refused to order a residential placement in state since the ALJ found that no such school existed. G.W. v. Boulder Valley School District 116 LRP 10538 (United States District Court, Colorado (2016)).

C. Statute of Limitations

1. The Court addressed the legal question of whether the IDEA's two year statute of limitations (unless a State has enacted a different period of time) limited the time period for filing a due process hearing and/or limited the period of time in which a remedy can be awarded.

In the first Court of Appeals decision on the issue, the Court concluded that the IDEA's statutory wording is ambiguous. After analyzing the rules of statutory interpretation and legislative intent, the Court held that the IDEA's statute of limitations only applies to the filing of the due process hearing complaint, that is, it must filed within two years after the parents "knew or should have known" about the alleged violation (Note: The IDEA contains two exceptions: specific misrepresentations by the school or the withholding of statutorily mandated information). The two year statute of limitations does "not act as a cap on a child's remedy for timely filed claims that happen to date back more than two years before the complaint is filed." Therefore, compensatory education can be awarded to whatever extent is necessary to make up for the child's denial of FAPE and is not limited to the two year period. G.L. v. Ligonier Valley School District 66 IDELR 91 (United States Court of Appeals, 3rd Circuit (2015)).

D. Hearing Officer Authority

1. The parents of a student with autism who posed significant behavioral problems in school were offered placement in an

approved private special education school by the school district. The parent rejected the offer and initiated a due process hearing. The hearing officer ordered that the student shall be referred to a Central Based Support Team "which will consider all options for the student's placement, including non-approved non public schools."

The Court overturned the hearing officer's order. Unlike a case where the parents are seeking reimbursement for a private school placement they made, under the IDEA the placement by a school district in a private special education school must be in a school approved for special education by the state. A FAPE is defined by the IDEA as special education and related services that "meet the standards of the state education agency." Therefore, a hearing officer's order directing the school district to consider placing the student in a non-approved school was contrary to the IDEA. Z.H. v. New York City Department of Education 65 IDELR 235 (United States District Court, Southern District, New York (2015))

2. A parent filed a due process hearing request alleging that her student had been denied a FAPE. She sought compensatory education. The hearing officer ordered the school provide the student with 25 intensive speech therapy sessions with the same speech pathologist that the parent had contracted with to provide private speech services to her student.

The parent appealed. The District Court concluded that the parent had not been aggrieved by the hearing officer's decision. The federal court complaint sought reimbursement for the cost of her daughter's sessions with the speech and language pathologist which was not the relief she requested from the hearing officer. Therefore, the Court reasoned that since the parent was not aggrieved by the hearing officer's decision not to reimburse her for the privately obtained speech services it dismissed her claim.

The Court of Appeals overturned. The Court noted that the parent had requested several forms of compensatory education, including speech and language services, which the hearing officer acknowledged had been helpful and thus ordered the school to pay for 25 more sessions. The hearing officer's failure to explicitly order the school to also pay for the 25 prior sessions did not mean that the parent did not intend such reimbursement to be part of the requested relief.

Compensatory education is a judicially created equitable remedy available "to compensate for a past denial of a free appropriate public education." The Court held that "reimbursement for out-of-pocket educational expenses" is one type of compensatory education and thus the parent's request for compensatory education in the due process complaint must be read to include a request for

reimbursement. The Court remanded the matter back to the District Court. Foster v. Board of Ed of the City of Chicago 66 IDELR 161 (United States Court of Appeals, 7th Circuit (2015)) Note: This is an unpublished decision.

3. The parents of a student with a disability prevailed in a due process hearing which found that their student was denied a FAPE. The hearing officer ordered reimbursement for private services obtained by the parents and new assessments. A new IEP was to be developed based on the new assessments. An award of compensatory education was also ordered for "intensive occupational therapy" for five hours per week for a three month period.
The Court of Appeals found that the hearing officer used the correct legal standard in determining compensatory education—that is "compensatory education should provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place". However, the Court held that the compensatory award was not sufficient since it did not address other areas where the student did not make meaningful educational progress.
The Court recognized the "difficulty inherent" in determining an appropriate compensatory award and that further assessments may be needed in the "complicated work" of fashioning a remedy. If so, the hearing officer or court "should not hesitate to order" additional assessments. B.D. v. District of Columbia 67 IDELR 135 (United States Court of Appeals, District of Columbia Circuit (2016))
Note: The Court did not address the legal obligation of the hearing officer to issue a final decision and order within the IDEA timeframes. A hearing officer is without authority to extend the timeline on their own initiative.

E. Evidence/Hearings

1. The parents of a student with a disability sought to present additional evidence to the District Court appealing an adverse decision by the hearing officer. The parent first alleged that the hearing officer imposed an arbitrary time line for witness examination and a full presentation of their case.
The Court disagreed. The hearing officer, in a pre-hearing order, granted the parent's attorney request for a four day hearing. The hearing officer noted that the lists of witnesses contained numerous witnesses testifying to the same matters and suggested that affidavits be submitted for some of the witnesses. The parent's attorney never objected to the hearing officer's efforts to keep

things moving forward or asked the hearing officer for additional time to introduce relevant evidence for the proceedings.
The Court noted "Moreover, IHO's[Impartial Hearing Officers], like judges, have the inherent authority to manage hearings to avoid needless waste and delay. They should exercise control when necessary to manage the proceedings and eliminate unnecessary costs and redundancy, including imposing reasonable time limits where appropriate."
The Court, however, did allow additional evidence to be presented by the parents when the hearing officer allowed the school district to submit an affidavit after the evidentiary record was closed which appeared to contradict the testimony of one of its own witnesses without the opportunity of the parents to cross examine or present rebuttal evidence. L.S. v. Board of Education of Lansing School District 65 IDELR 225 (United States District Court, Northern District, Illinois (2015)).

2. The parents of a student with a disability appealed an adverse due process hearing decision alleging that their Constitutional due process rights were violated when the Administrative Law Judge (ALJ) limited the time for the presentation of their case. In a pre-hearing conference, the attorney representing the family stated that they needed 1.5 days to present their case. The ALJ issued a pre-hearing order allowing each side 9 hours to present their case and to plan accordingly since the time limit would be enforced. The attorney representing the family was in the middle of questioning the second witness when the 9 hour time expired.
The Court of Appeals held that there was no abuse of discretion by the ALJ in holding the parties to the time limit in the pre-hearing order. The ALJ balanced the due process rights of the parties with the "need for administrative efficiency and limited public resources." In addition, the family's attorney never objected to the time limitation until the second day of the hearing.
It should be noted that the state also has a statute requiring ALJs to limit the due process hearing to sufficient time for each party to present their case and to control and manage the hearing. B.S. v. Anoka Hennepin Public Schools 115 LRP 41337 (United States Court of Appeals, 8th Circuit (2015).

3. A student with autism had his IEP placement changed to a private special education school which operated a satellite program at the public school. In June, when informed that the satellite program would not continue at the public school the following school year, the student's IEP Team met and placed the student at the private school until the following October when the Team would review his placement.

As a result of the October IEP meeting, the Team decided that a program operated by the public school, modeled on the private satellite program, was an appropriate placement although that determination was not unanimous. Both the public and private programs are similar: both are accessible, self-contained special education schools that use the ABA/VBA method for autistic students. However, when the IEP was developed the public program was operating on a 36 week calendar and the private program was based on a 46 week calendar.
The parents challenged the placement change by requesting a due process hearing. The ALJ found that the public program would provide the student a FAPE. At the hearing, school district witnesses testified that at the time of the hearing the public program was operating on a 41 week schedule and that "bridge services" were available to lengthen the student's program to 46 weeks matching the private program. The District Court agreed. On appeal, the parents contended that both the ALJ and District Court erred by relying on "retrospective evidence" about the length of the public program that was not available to the IEP Team but introduced for the first time at the due process hearing. The Court rejected the parents' argument stating that the District Court found that the evidence was proper since the dispute was not over appropriate services but the ability of the IEP placement to implement the IEP. Further, even if the introduction of new testimony regarding the duration of the program was a procedural error it was harmless since there was no evidence of actual harm to the student since the student would receive all required IEP services. S.T. v. Howard County Public School System 66 IDELR 270 (United States Court of Appeals, 4th Circuit (2016)). Note: This is an unpublished decision.

F. Miscellaneous Hearing Issues

1. A student with cerebral palsy was on an IEP which called for one-on-one paraprofessional support. She has a service dog who assists her by increasing her mobility and assisting with some physical tasks. The student was not allowed to bring her service dog to school. The school administrators prohibited the service dog reasoning that the dog would not be able to provide any support that the paraprofessional could not provide.

   The family began homeschooling their student and filed a complaint with OCR. OCR found that the school violated the ADA by not allowing the student to bring her service dog to school. The family then sued the school, the principal and the school district alleging violations of the ADA, Section 504 and

state disability law.

The Court, in a 2-1 decision affirming the District Court, dismissed the lawsuit for failing to exhaust the IDEA's due process hearing system. The Court found that the "core harms" that the family raises relate to the specific purposes of the IDEA. Specifically, the Court stated:

> The exhaustion requirement applies to the [parents'] suit because the suit turns on the same questions that would have determined the outcome of IDEA procedures, had they been used to resolve the dispute. The [parents] allege in effect that [the student's] school's decision regarding whether her service animal would be permitted at school denied her a free appropriate public education. In particular, they allege explicitly that the school hindered [the student] from learning how to work independently with [the service animal], and implicitly that [the service animal's] absence hurt her sense of independence and social confidence at school. The suit depends on factual questions that the IDEA requires IEP team members and other participants in IDEA procedures to consider. This is thus the sort of dispute Congress, in enacting the IDEA, decided was best addressed at the first instance by local experts, educators, and parents.

Fry v. Napoleon Community Schools 788 F.3d 622, 65 IDELR 221 (United States Court of Appeals, 6th Circuit (2015)). Request pending for appeal to the United States Supreme Court

2. A parent of a student that was never identified as special education eligible initiated a due process hearing claiming the school district violated both the IDEA and Section 504 by not evaluating or identifying their student as disabled. The parents and school agreed to go to mediation which resulted in a mediation agreement. The parent then filed a Motion to Dismiss the due process hearing with prejudice which was granted.
Subsequently, the parent initiated a lawsuit against the school district under Section 504, the ADA and Section 1983. They sought monetary damages.

The Court of Appeals, in affirming the District Court, dismissed the lawsuit for failure to exhaust administrative remedies. The Court held that only if a party is "aggrieved by the findings and decision made" in a due process hearing can a party file a civil lawsuit absent a showing of futility.
The Dissent observed this interpretation of the majority is inconsistent with the overall statutory framework of the IDEA. The dissent posed the question:

> Indeed, why would Congress, after creating a framework that quite clearly encourages resolution of IDEA claims by various means, force a claimant to avoid resolution of her claim by mediation or preliminary meeting and lose at both the due process hearing and administrative appeal stages? Doing so would effectively render superfluous the mediation and preliminary meeting provisions of the statute. Further, precisely how could a claimant ensure a loss in both the due process hearing and the administrative appeal, yet later present a viable claim in federal court?

A.F. v. Espanola Public Schools 66 IDELR 92 (United States Court of Appeals, 10th Circuit (2015)).

3. The Office of Special Education Programs issued a letter stating that if a due process complaint is submitted regarding disciplinary issues (disciplinary change of placement, manifestation determinations, behavior that is substantially likely to result in injury) under 34 CFR 300.532(a), expedited due process procedures are mandatory. Therefore, the due process hearing must occur within 20 school days of the filing of the complaint with a hearing decision issued within 10 school days of the hearing. A hearing officer has no authority to extend the timeline of an expedited hearing at the request of a party or parties.
If a due process request includes both disciplinary and non-disciplinary matters, the hearing officer has discretion on how to manage the case before them. A hearing officer may decide that it is prudent to bifurcate the hearing. In such case the disciplinary issue would be subject to the expedited hearing timelines while the non-disciplinary issues would be subject to a separate hearing under the standard hearing timelines. Letter to Snyder 67 IDELR 96 (United States Department of Education, Office of Special Education Programs (2015)).

4. The Office of Special Education programs issued a guidance letter addressing issues that may arise as a result of a due process hearing being filed. Regarding a resolution session, OSEP affirmed the option of amending the IEP during a resolution session without the need of having a full IEP Team meeting. The IDEA allows an IEP to be amended after the annual IEP Team Meeting without holding another IEP Team meeting if both the parent and school district agree. (see 343 CFR 300.324(a)(4)) As OSEP stated "The IDEA does not place any restrictions on the types of changes that may be made so long as the parent and the public agency agree".
OSEP also clarified, that unlike mediation, the IDEA has no provision that requires that resolution discussions be kept confidential. Therefore, absent any enforceable agreement by the parties requiring resolution discussions be kept confidential, such discussions can be introduced in a subsequent due process hearing or civil proceeding.
Lastly, OSEP restated an earlier position that even if "stay put" is in place there is nothing in the IDEA regulations that relieves a school district of its responsibility to have at least an annual IEP Team meeting. However, if the IEP Team revises the IEP while "stay put" is in place the new IEP cannot be implemented unless the parents and school agree. Letter to Cohen 116 LRP 6068 (United States Department of Education, Office of Special Education Programs (2015))

5. The IDEA requires that, after removing personally identifiable information regarding a student, due process hearing decisions must be made available to the public. The State should not be redacting the names of hearing officers and the school district unless the release of such information would result in the release of personally identifiable student information.
The guidance letter goes on to state:

> In some circumstances, the name of the district may result in the release of personally identifiable information. The determination regarding those personal characteristics or other information, such as the name of the district, that would make it possible to identify the child with reasonable certainty, or make the student's identity easily traceable, must be made on an individualized basis and not based on a general policy of disclosure. The public agency must consider the contents of each

> due process hearing finding and decision to determine which personal characteristics or other information contained therein would make it possible to identify the child with reasonable certainty or make the student's identity easily traceable if disclosed to the school's community or the community at large. In general, factors to consider include, but are not limited to, the size of the district, school and grade and the prevalence and knowledge of the child's personal characteristics and other information (e.g., disability, initials, parent's advocacy work) within the school community and the community at large. In individually weighing these factors, the agency should determine the information or combination of information that would constitute personally identifiable information and remove it from the due process hearing findings and decision prior to its public dissemination.

Letter to Anonymous 116 LRP 11174 (United States Department of Education, Office of Special Education Programs (2016))

X. Section 504/ADA Issues

A. A student who was gifted and disabled was originally placed in a gifted program in a regular public school. After her behavior became aggressive and disruptive, her IEP changed her placement to a special school for students who are emotionally disturbed. The parents agreed to the change of placement.

At the special school, the student engaged in aggressive behavior assaulting staff and the school's security officer. The student was handcuffed and arrested twice for assault and battery. The charges were eventually dropped. The student was then moved to a private psychiatric school at school district expense.

The parents then initiated a due process hearing under the IDEA and also filed an action in Court alleging violations of Section 504, the ADA and state law tort claims. The parents and the school entered into a settlement resolving all of the IDEA claims.

The District Court granted summary judgment in favor of the school district on all of the remaining claims under Section 504, the ADA and state law. The Court of Appeals reversed and remanded the case back for further consideration.

In doing so, the Court provided an analysis of the similarities and differences between the standards under the IDEA, Section 504 and the

ADA. The Court discussed the legal errors in the lower court's decision which included the following.
First, the Court stated that the parents consent to the IEP change of placement did not bar the parents from challenging that placement. Therefore, the parents claim that their student was denied meaningful access under Section 504 should not have been dismissed based on their previous consent to the placement.
Second, the parents alleged that the school never provided sufficient behavioral evaluations or supports which resulted in inappropriate accommodations under Section 504. The Court, in its reversal, held that even though the parents never requested the behavioral support services it was not determinative of their claim. The Court observed that the parents did not have the expertise "nor the legal duty" to determine what accommodations might allow their student to remain in a regular education environment. A.G. v. Paradise Valley Unified School District 116 LRP 8356 (United States Court of Appeals, 9th Circuit (2016))

Note: This outline is intended to provide workshop participants with a summary of selected Federal statutory/regulatory provisions and selected judicial interpretations of the law. The presenter is not, in using this outline, rendering legal advice to the participants. The services of a licensed attorney should be sought in responding to individual student situations.