YOU BE THE JUDGE: Did the school discriminate against the child for using "alternative Food"?

ANSWER

C. In favor of the District - While the student was treated differently than the other students with respect to food, there is no evidence that this in itself meant that the child was isolated from the group and/or was not receiving FAPE.

The Section 504 regulation at 34 CFR 104.4 (a) provides that schools may not discriminate against students with disabilities or exclude them from participating in, or deny them the benefits of, school programs. OCR interprets that provision to mean, among other things, that schools must take steps to make school environments as safe for students with disabilities as they are for nondisabled students. *See Virginia Beach (VA) City Pub. Schs.*, 59 IDELR 54 (OCR 2012); and *Washington (NC) Montessori Pub. Charter Sch.*, 60 IDELR 79 (OCR 2012).

A district cannot exclude a student from a program or class in which he would be exposed to allergens without first determining whether it can accommodate the student. *See, e.g., Bethlehem (NY) Cent. Sch. Dist.*, 52 IDELR 169 (OCR 2009) (district violated Section 504 when it barred a student with peanut, dairy, egg, kiwi, and crab allergies from enrolling in its culinary arts course).

Did the district deny the student FAPE in LRE by using a self-contained kindergarten class?

ANSWER

How the ED ruled: C.

In *Columbus City School District,* 116 LRP 11835 (SEA OH 02/10/16), the state ED found that the district appropriately followed the student's IEP, as well as those of the similarly situated students, and complied with the IDEA's LRE directives. In particular, the ED pointed out that the district followed the student's IEP regarding his time in a small, private setting and provided opportunities for the student to participate in general education music and art classes.

A is incorrect. With exception to one student, the state ED noted that the IEPs at issue all presented the need for small-group instruction for the students to be able to learn. For the student whose IEP indicated that he may require small-group instruction, providing it to him in this setting did not violate his IEP.

B is incorrect. The state ED noted that the art teacher and music teacher's explanation about the students' opportunities to participate in general education settings showed that the district was taking steps to ensure that FAPE was provided in LRE.

The state ED also highlighted that the district was "continually assessing" the individual capabilities of these students to determine the extent to which they could participate in general education.

Is the teen entitled to compensatory services to make up for the missed accommodations?

ANSWER

How the hearing officer found: C. He made academic progress despite not receiving all of the accommodations.

The Massachusetts Bureau of Special Education Appeals concluded that the teen was not entitled to compensatory education because of the district's imperfect implementation of his 504 plan. *Littleton Pub. Schs.,* 116 LRP 24170 (SEA MA 06/02/16).

Some of the teen's teachers readily acknowledged that they did not provide every accommodation consistently. However, the hearing officer pointed out, such imperfect implementation does not automatically result in a denial of FAPE or an award of compensatory education.

The IHO observed that the teen scored in the advanced level on state standardized tests in all areas assessed, progressed from 10th to 11th grade, and was able to fully access accelerated courses. Although the parent contended that the teen needed direct instruction from a special education teacher to receive FAPE, the IHO disagreed, finding that his needs were met as adequately as those of his nondisabled peers without such instruction.

A is incorrect. While it's true that the district did not perfectly implement all of the accommodations, the IHO explained that such noncompliance does not automatically entitle a student to compensatory services. Because there was no finding here that the teen was denied FAPE, the IHO reasoned, there was no basis for a compensatory education award.

B is incorrect. Compensatory education is an equitable remedy that is available whenever a district knows, or should have known, that a child's educational program is not appropriately addressing his disability or that the child is receiving only trivial educational benefit and the district then fails to remedy the violation.

Did the district discriminate against the student by storing the FM system in an office?

ANSWER

How the state ED found: B. Noting that the technology would be available when necessary, and making sure the teachers knew how to use it, were enough to show that disability discrimination did not occur.

In *Parkland School District,* 115 LRP 49930 (SEA PA 09/28/15), an IHO determined that the district followed the 504 plan, and the parents were aware that the FM system was only to be provided to the student "as needed." Because of this, there was nothing to show that the district denied the student access to his educational program on the basis of disability.

A is incorrect. The IHO explained that "given the totality of Student's stellar presentation in the school setting as a learner, as a communicator, and as a self-advocate, I have no doubt that Student would have retrieved [the system] from the guidance office, and used it if Student felt it was helpful."

C is incorrect. The IHO approached the mother's argument with skepticism. He noted that she had been "exacting" in preparation and collated the student's grades onto a poster as well as explored a theoretical point system whereby a student could do poorly on tests and quizzes but still get an overall good cumulative grade. In the IHO's view, her preparations "belied" her claim to have acted inattentively in signing the 504 plan.

In reaching her conclusions, the IHO highlighted the district's training the teachers and having the FM system available whenever the student requested it.

YOU BE THE JUDGE: Is district liable for not identifying suicidal private school student?

ANSWER

How the IHO found: B

The district had no basis for identifying the student given that no one ever made it aware of her disabilities or psychological struggles. *District of Columbia Pub. Schs.*, 115 LRP 16798 (SEA DC 01/05/15).

The hearing officer pointed out that neither the student's private school nor her parents alerted the district to the child's needs. The district "received no notice about Student at all, much less about qualifying disabilities," the IHO wrote.

The IHO also rejected the parents' claim that the district didn't so everything it should have to ensure the parents knew about the availability of publicly funded special education. The evidence established that the district provided special education information to both of the student's schools. "[A]ny lack of awareness by [the parents] was because they did not obtain information from the private schools," the IHO stated.

A is incorrect. The district met its obligation through its quarterly meetings.

C is incorrect. Because the child find obligation is an affirmative one, a parent isn't required to request that a district identify and evaluate a child.

D is incorrect. It applies to all children with disabilities who reside in the state or district, including homeless children and private school student. 34 CFR 300.111 (a).

Does absence of required IEP tem participants render district's offer procedurally defective?

ANSWER

How the ALJ ruled: C. By the time the director presented the offer, the IEP team had already finished discussing and developing the proposed IEP.

The fact that the special education director presented the district's final offer of FAPE orally when not all team members were on hand didn't render the offer procedurally defective. *San Bruno Park Unified Sch. Dist.,* 116 LRP 17626 (SEA CA 04/11/16).

The ALJ acknowledged that the district's offer was presented at the end of the second meeting when various team members already had excused themselves. However, the offer "was the culmination of several hours of active, robust, and informative discussions that took place with an appropriately configured IEP team," the ALJ wrote. Thus, the ALJ concluded, the task of articulating the offer to the parent was "ministerial in nature" and other members were not required to be present.

A is incorrect. While that's true, the ALJ effectively found that the IEP team meeting discussions already had been completed and the district was simply presenting its offer of FAPE.

B is incorrect. The ALJ pointed out that, other than the parent, each team member who attended the IEP meetings testified that the IEP was appropriate. There was no evidence that any member's opinion would have changed had they been present when the final offer was made.

Did the IEP team follow appropriate procedures in determining the student's placement?

ANSWER

How the Colorado ED found: C.

The district predetermined the student's placement in the special education school when it put the decision to a vote. *(Harrison Sch. Dist. Two,* 116 LRP 34796 (SEA CO 06/30/16)

Parents have a right to meaningfully participate in the IEP process. Although the district makes the final decision about the student's services and placement when the team members can't reach an agreement, the team must discuss the disputed matters first. The ED explained that the placement by majority vote nullified the parent's input. "There was no true effort among [the] school psychologist or any of the school district staff to build consensus relating to the placement determination; a list of 'pros' and 'cons' was made for each placement, and then the decision was put to a vote," the ED wrote.

The ED further noted that almost all of the mandatory participants for IEP meetings are district employees. As such, making IEP decisions by majority vote –a practice that OSEP criticized in *Letter to Richards*, 55 IDELR 107 (OSEP 2010) –would almost always make the parent's voice moot.

A is incorrect. The district had the right to make the final decision, but not majority vote. It must provide the parent with prior written notice of the student's services and placement and inform her of her right to challenge that decision. *Letter to Richards,* 55 IDELR 107 (OSEP 2010).

B is incorrect. The voting process would have been inappropriate even if each team member had detailed knowledge and understanding of the student's special education needs.

DO rap lyrics, interest in guns, demonstrate likelihood of injury?

ANSWER

How the ED found: **B. The student didn't threaten anyone and hadn't engaged in violence.**

The ED ordered the district to restore the student to his prior placement, pointing to the lack of evidence that the student made any threats or exhibited any violent behavior. *Salem City Bd. Of Educ.,* 116 LRP9755 (SEA NJ 03/01/16). There was no evidence of a direct threat made by the student, the ED observed, and the district failed show that the student offered the lyrics to anyone who could perceive them as a threat.

The ED acknowledged that the lyrics were "very serious" and that the student had been instructed not to talk about guns. However, given that he never exhibited any behavior indicating that he would follow through with the acts described in the lyrics, the district couldn't demonstrate that maintaining him in his current school was substantially likely to result in injury, the ED concluded.

A is incorrect. Even if the lyrics could have been construed as a threat, threats alone generally are insufficient to establish a substantial likelihood of injury.

C is incorrect. The IDEA doesn't identify for determining whether a substantial likelihood of injury exists. Nevertheless, most judicial and administrative decisions have found a substantial likelihood only where the student engaged in more than minimal physical violence.

YOU BE THE JUDGE: Must district investigate other parents' mocking of child at graduation?

ANSWER

How OCR found: B

The district was required to respond promptly and equitably regardless of whether the individuals engaging in the alleged harassment worked for the district. *Elk Grove (CA) Unified Sch. Dist.,* 115 LRP 24934 (OCR 12/19/14).

OCR stated that the principal's alleged initial response –that she could do nothing about statements made by other parents –was improper. So too was the district's assertion that the alleged harassment wasn't subject to its complaint procedures. OCR pointed out that the district had a duty to investigate and remedy harassment occurring at its events regardless of whether the individuals committing the act were district employees.

Furthermore, OCR stated, the district was required by Section 504 to ensure that its programs, activities, and services were offered in a nondiscriminatory manner. "The obligation includes a requirement that the District address and respond to the discriminatory acts of others who are using or participating in its programs, activities, and service and it cannot ignore reported or known acts of others' discrimination," OCR wrote.

A is incorrect. Because the student's manner of walking was related to his disability, the parents' reported comments were disability-based.

C is incorrect. A harassment complaint requires a prompt and equitable response regardless of whether it is verbal or in writing.