

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

Student is a first grader at a local elementary school who has a milk and tree nut allergy. Student’s teacher regularly did class projects involving food which contained milk and tree nuts. Student’s teacher provided the student with an “alternate food” for those projects, while the rest of the children enjoyed the food that contained milk and tree nuts. Student’s parents sue the District alleging that the student is being discriminated against because he was being given different foods than the rest of his classmates.

The Court ruled that:

- A. In favor of the parents - the School should have given all students the food containing no tree nuts or dairy, because giving the student different food isolated him from his classmates and had a discriminatory effect.
- B. In favor of the parents - The School discriminated against the child because he had a different food than the others and was prevented from learning in a meaningful way.
- 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.

YOU BE THE JUDGE: Does restricting kindergartener to self-contained class violate LRE?

An Ohio district placed a kindergartener and six similarly situated students in a self-contained class for students with multiple disabilities. The parent alleged in a state complaint that this setting was problematic because it did not provide the student or those similarly situated to him with FAPE in the LRE. The parent alleged that the students were educated in separate classes for art and music but could be educated with typically developing students.

The district presented the students' IEPs, which indicated that the students could not receive all special education services with nondisabled peers. For example, one IEP indicated that the student's difficulties with social skills, adaptive skills, and motor and communicative issues required extensive interventions in a controlled small group setting. Another student whose parent filed the complaint had an IEP that indicated the need for "a controlled small group setting."

Additionally, the art and music teacher presented evidence suggesting that the student and similarly situated students were participating in the general art and music classes on an individualized basis.

Under the IDEA's LRE regulations at 34 CFR 300.114, districts must, to the maximum extent appropriate, ensure that children with disabilities are educated with children without disabilities and that special classes should occur if the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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

A. Yes. Without specific justification for why the student could not be educated with peers in general education classes, the references in the IEP about small group instruction presented LRE challenges.

B. Yes. The fact that multiple students had similar IEPs showed that the district was not interested in trying to make sure students were educated in a general education setting but opted for a secluded one instead.

C. No. The district followed what the IEPs indicated the individual students needed to receive educational benefit and endeavored to provide opportunities for participating in general education art and music.

YOU BE THE JUDGE: Does sporadic provision of 504 accommodations open door for comp ed award?

The section 504 plan of a teen with ADHD included several accommodations designed to target his deficits in executive functioning and processing speed.

Among the accommodations were teachers signing his agenda book on a daily basis, teachers providing duplicate copies of assignments to the guidance office, and the teen's core academic teachers and counselors meeting bi-weekly to share information about his progress.

Several teachers acknowledged that they did not provide all of the accommodations consistently. The Massachusetts district contended, however, that the implementation failure was insignificant because the teen was able to progress academically.

Under 34 CFR 104.33 (b), a district delivers FAPE under Section 504 if it provides regular or special education and related aids and services that are designed to meet the needs of a student with a disability as adequately as the needs of nondisabled students are met. 34 CFR 104.4 further provides that aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with disabilities and nondisabled individuals, but must generally provide an equal opportunity to obtain the same result.

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

- A. Yes.** The district failed to fully implement the 504 plan.
- B. No.** Compensatory services are only available as a remedy under the IDEA, not Section 504.
- C. No.** He made academic progress despite not receiving all of the accommodations.

YOU BE THE JUDGE: Does storage of student's FM system in guidance office amount to discrimination?

An eighth-grader who had diagnoses of attention deficit disorder, central auditory processing disorder, and sensory integration issues had a 504 plan that called for access to an FM system "as needed." He reported to his parents that he had not seen the system in any of his classrooms during the school year. He also said that he had not used it the previous year.

The student achieved A's and B's in most of his classes, but missed a B by one point during one marking period in a class that was considered particularly difficult. His parents were concerned that noise in the class may have contributed to his lower-than-desired grade. They filed a due process complaint, alleging that the FM system was not available to the student because it was kept in a guidance office and not in the student's classrooms.

The student had an evaluation from a pediatric neurologist, who concluded that not having the system negatively affected his grades. However, another of the student's evaluators concluded that the student might not even need a 504 plan at all. The mother signed off on the 504 plan that indicated that the Pennsylvania district would provide the system "as needed" to help with communication issues the student might have.

The mother said she did not read the plan carefully before signing and would not have signed if she had known the system would not be in the classroom. The district trained all of the student's teachers to use the technology in case he requested it.

Discrimination on the basis of disability occurs when a student is denied of a district's educational program on the basis of the student's disability.

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

A. Yes. If the 504 plan called for an FM system to be provided, the district should not have required the student to go out of his way to get it.

B. No. 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.

C. Yes. Districts must verify that parents have read all key provisions of a 504 plan before accepting them as effective. By not doing so in this case, the district committed disability discrimination by keeping the student apart from AT that he required.

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

A private school student who resided in the District of Columbia had never attended public school or been referred to the district.

In 2010 and 2014, private evaluators diagnosed the student with ADHD, depression and LD. The parents shared the evaluations with the student's two private schools. The schools never alerted the district or informed the student's parents about publicly funded special education, even after the student exhibited suicidal behavior. One of the schools later explained that it doesn't refer students to the district unless parents request it to do so.

Each year the student attended the private schools the district held quarterly meetings with private schools in the District of Columbia, including the student's schools. During the meetings, the district supplied the schools with information about special education, including forms for referring children to the district.

The parents filed a due process complaint alleging that the district violated child find by failing to identify and evaluate their daughter.

"Child find" is the affirmative, ongoing obligation of states and districts to identify, locate, and evaluate all children with disabilities residing within the jurisdiction that either have, or are suspected of having, disabilities and need special education as a result of those disabilities. 34 CFR 300.111.

Does failure to identify, evaluate student violate child find?

A. Yes. The district didn't do enough to make sure that the parents of private school students knew that publicly funded special education was available.

B. No. The district was in the dark about the student's situation.

C. No. The district should find obligation would have been triggered only if the parents requested an evaluation.

D. No. Child find doesn't extend to private school students.

YOU BE THE JUDGE: May special education director present final FAPE offer after mandatory IEP team members left meeting?

A California district held two IEP meetings in which the parent of a 6-year-old with autism and the other necessary team members engaged in robust conversations regarding the child's programming and placement.

At the end of the second meeting, the district was ready to present its offer of FAPE. Some required team members had already left, albeit without the parent's written consent. Nevertheless, the special education director orally presented the district's offer to the parent.

Each individual who attended the IEP meetings, other than the parent, later testified that they believed the proposed IEP was appropriate.

The parent filed a due process complaint alleging that the district violated the IDEA procedurally because the director was the only staff member who contributed to and made the offer.

A mandatory IEP team member may be excused from an IEP meeting involving a modification to or discussion of the member's area of the curriculum or related services, if the parent and district consent in writing and the member submits input prior to the meeting. 34 CFR 300.321 (e)(2).

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

A. Yes. A parent's written consent is required before mandatory IEP team member may be excused from IEP meeting involving a modification to or discussion of the member's area of the curriculum or related services.

B. Yes. Had other team members been present, their input might have changed the district's offer.

C. No. By the time the director presented the offer, the IEP team had already finished discussing and developing the proposed IEP.

YOU BE THE JUDGE: Can an IEP team decide a sixth-grader's placement by majority vote?

A Colorado district convened an IEP meeting for a sixth-grader who had attended a private autism program for several years. Although some district members of the IEP team had never met or observed the student, the student's teacher from the private school attended the meeting. The director of the private program also participated. The team identified two potential placements for the student: the private autism program and a public special education school. After listing various pros and cons of each placement, the school psychologist (serving as the IEP facilitator) put the decision to a vote. The district team members all voted to place the student in the public school, while the private school representatives voted to continue the private program. Because the public school received more votes, the psychologist declared it to be the student's placement.

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

A. Yes. When the IEP team members are not in agreement, the district decides the student's placement and services.

B. No. Although the voting process was appropriate, the district should have discounted the votes of team members who had never met or observed the student.

C. No. By putting the placement to a vote, the district impeded the parent's participation in the IEP process.

YOU BE THE JUDGE: Do student's journal entries justify removal to IAES?

A high school student with SLD wrote the following original rap lyrics in his school journal: "U better dip like a chip because I got a new gun with 2 clips I can't wait to use it better yet shoot it."

The student had never shared the lyrics or performed them at school. He had no history of violence. However, he had been warned several weeks earlier not to talk about guns at school after he told his class that his father might be getting a gun and that he liked guns.

During the superintendent's investigation, the student stated that he didn't own or have access to a gun. Concerned about the safety of students and staff members, the school board placed the student in an alternative school.

The student's father requested an expedited due process hearing with the New Jersey ED, seeking to overturn that decision.

The IDEA permits a hearing officer to order a change in placement of a child with a disability to an IAES for not more than 45 school days if the IHO determines that maintaining the student's current placement is substantially likely to result in injury to the child or others. 34 CFR 300.532 (b) (2).

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

- A. Yes.** Threats alone are sufficient to establish a substantial likelihood of injury.
- B. No.** The student didn't threaten anyone and hadn't engaged in violence.
- C. No.** The IDEA specifically requires a showing that the student engaged in violence in order for a district to establish a substantial likelihood of injury.

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

The parent of a California sixth-grader with autism attended her son's graduation ceremony. The student's disability affected the way he walked. The parent told the principal that she heard other parents mock the way her son walked to the stage. She didn't know their names and couldn't identify them. According to the parent, the principal responded that there was nothing she could do about the other parents.

After a district administrator asked the principal to informally resolve the matter, the principal spoke to teachers who attended the ceremony. None of them had witnessed the parents' alleged behavior. Unable to identify the parents who made the comments, the principal closed the investigation.

The district's Uniform Complaint Procedures required the associate superintendent to investigate discrimination complaints, involve the parent, and provide the parent a written report.

The parent files an OCR complaint alleging that the district failed to adequately respond to parent's complaint. The district asserted that the other parents' actions weren't subject to its Uniform Complaint Procedures because the parents weren't district employees and their alleged actions weren't actions of the district.

Under section 504, districts must adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of disability discrimination complaints. 34 CFR 104.7 (b).

Is the district's informal response to mom's discrimination complaint appropriate?

- A. Yes.** The other parents' comments at graduation weren't disability-based.
- B. No.** It was irrelevant that the other parents weren't employed by the district.
- C. Yes.** A verbal harassment complaint doesn't require a formal response.