

Scenario #1: You Be the Judge

Findings of Facts:

1. State: Pennsylvania
2. Grade: early elementary
3. Type of School: SD
4. Disability: ADHD
5. Background: parents were getting a divorce;
6. Mother requested evaluation
7. Parents information sheet status -
 - Father provided input to ER
 - Mother's input was hand delivered
 - psychologist did not receive; unable to include in the report
8. 60 day time limit was followed
9. Report was issued
10. Student was found ineligible for special education services

Scenario #1: You Be the Judge

Findings of Fact (cont.):

11. Mother read the report and noticed that her input was not entered.
12. Psychologist offered to include mother's input but stated that this would not change the conclusion
13. Mother did not agree and filed for due process

For your reference –

- 34 CFR 300.304(b)
- 34 CFR 300.502(b)(2)

Scenario #1: You Be the Judge

Did the failure to obtain mother's input undermine the district's eligibility decision?

A. Yes . The absence of the mother's input made the evaluation fatally flawed.

B. No. The report contained sufficient information to make a decision without mother's input

C. Yes. IDEA requires districts to consider parental input in determining IEP content but not whether a child is eligible.

Scenario #2: You Be the Judge

Findings of Facts:

1. State: New York
2. Type of School: Charter School
3. Grades: 5 Kindergarten students
4. Disabilities:
 - Specific Learning disability
 - Emotional Disturbance
 - Some students not identified
5. Students were repeatedly suspended for code of conduct violations, such as running in the hall or class, having a tantrum, failure to maintain a specific sitting position.
6. Parent was barred from observing the class

Scenario #2: You Be the Judge

Findings of Facts (cont.):

7. One child's parents were told "*your child is not a good fit for our school*".
8. All 5 students were removed from class on a regular basis
9. One student was removed to a psychiatric facility while acting out on a field trip
10. When one parent requested that their child be evaluated the CS refused
11. Some of the parents requested accommodations since their children were students with special needs
12. At one point, the CS threatened to call the police
13. All 5 parents were pressured to remove their children from the school

Scenario #2: You Be the Judge

Is there a point where rigid enforcement of the code of conduct may lead to a discrimination allegation?

- A. Yes.** The U.S. District Court, Eastern Division of N.Y., denied the school's motion to dismiss the parents' disability discrimination claim

- B. No.** The judge determined that the parents were unable to prove that the CS acted in bad faith or misjudgment

- C. Yes.** The U.S. District Court, Eastern Division of N.Y dismissed the case against the CS since the parents were unable to establish disability discrimination or retaliation

Scenario #3: You Be the Judge

Findings of Facts:

1. State: Massachusetts
2. Grade: Elementary School
3. Type of School: Charter School
4. Disability: 'thought to be'
5. Background: Charter School requested an evaluation for a student demonstrating severe behaviors
6. Parent refused the evaluation
7. Charter School sent a letter to the parent indicating that they may contact the Department of Children and Families if consent was not provided.
8. Parent filed a complaint with Office of Civil Rights alleging that the CS discriminated and retaliated based on her failure to give consent.

Scenario #3: You Be the Judge

Findings of Facts (cont.):

- OCR was required to determine if the parent –
 1. Engaged in a protected activity?
FACT: parent refused to consent to an evaluation and failed to attend a planning and placement team meeting.
 2. Experienced an adverse action caused by the CS?
FACT: the Charter School's sent a letter informing the parent that they may refer her to DCF for educational neglect
- Was there a connection between the adverse action and the protected activity?
FACT: Yes. OCR determined that the two were linked together

Scenario #3: You Be the Judge

Findings of Facts (cont.):

3. The executive director of the school indicated the following:
 - letter was not intended to threaten
 - letter was to inform the parent of the severity of the district's concerns
 - Demonstrated the severe behaviors by providing documentation of the actual write ups

For your reference:

34 CFR 104.61

Scenario #3 You Be the Judge

Did the charter school demonstrate that they had severe concerns to justify contacting Department of Child and Families?

- A. Yes.** OCR determined that the charter school's action of potentially contacting DCF regarding educational neglect caused an adverse reaction for the parent; therefore, the charter school violated 34 CFR 104.61 Section 504 causing the parent's allegations to be legitimate.
- B. No.** The Office of Civil Rights determined that the parent's claim of retaliation and discrimination was legitimate.
- C. Yes.** Office of Civil Rights determined that the charter school's concern was legitimate, not retaliatory or discriminatory.

Scenario #4: You Be the Judge

Findings of Facts:

1. State: New Jersey
2. Grade: Elementary School
3. Type of School: School District
4. Disability: Autism
5. Background: During the school day the student was supervised by a 1:1 aide and a special education teacher was present.
6. From ~3:00 - 6:00 the student attended an afterschool program
7. Student demonstrated inappropriate behaviors at ASP
8. SD would not allow student back into the After School Program until the behavior issues he was exhibiting at the time were stabilized

Scenario #4: You Be the Judge

Findings of Facts:

9. Plaintiffs filed a Petition for Due Process ("Petition") with the New Jersey Office of Special Education Programs
10. There were 4 violations listed:
 - Individuals with Disabilities Education Act ("IDEA") refusal to add the After School Program (ASP) to J.N.'s IEP;
 - IDEA for pre-determining that the J.N.'s IEP would not include the ASP
 - Americans with Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act ("Section 504") limiting or denying J.N. participation in the ASP
 - ADA claim for denying participation in the ASP, to which he was entitled.
 - Plaintiffs requested declaratory, compensatory, and injunctive relief as well as attorney's fees.

Scenario #4: You Be the Judge

Did the charter school demonstrate that they had severe concerns to justify contacting Department of Child and Families?

A. Yes. OCR determined that the charter school's action of potentially contacting DCF regarding educational neglect caused an adverse reaction for the parent; therefore, the charter school violated 34 CFR 104.61 Section 504 causing the parent's allegations to be legitimate.

B. No. The Office of Civil Rights determined that the parent's claim of retaliation and discrimination was legitimate.

C. Yes. Office of Civil Rights determined that the charter school's concern was legitimate, not retaliatory or discriminatory.



Scenario #5: You Be the Judge

Findings of Facts:

1. State: Pennsylvania
2. Grade: 8th
3. Type of School: SD
4. Disability: SLD/ODD (Supplemental LS)
5. Student also has complex social, emotional and behavioral issues which adversely affect student's ability to learn in the regular classroom setting.
6. Student attended current school from 2015-2019.
7. Student made minimal progress & actually regressed in reading, writing, & math.
8. LEA did not consistently implement a PBSP.

Scenario #5: You Be the Judge

Findings of Facts (cont'd):

9. LEA did not provide student with an IEP for the 2017-2018 school year to address academic and behavioral needs.
10. Student has not received an FBA since attending the school.
11. LEA uses suspensions to address behavioral issues. Student was suspended this school year for 5 days for a physical altercation with a teacher.
12. The most recent IEP expired on 1/2019.
13. The Reevaluation Report created 2/2019 was 8 months overdue and did not include a FBA.
14. An IEP was not provided in the 30 day timeline after the Reevaluation report.

Scenario #5: You Be the Judge

Findings of Facts (cont'd):

For your reference:

34 CFR 300.324

34 CFR 300.111(c)(1)

34 CFR 300.502(b)(1)(2)(i)-(ii)(4)

22 Pa. Code 14.121

Scenario #6: You Be the Judge

Findings of Facts:

1. State: Pennsylvania
2. Grade: 10th
3. Type of School: SD
4. Disability: None
5. Student in a college preparatory school attended by high-achieving students.
6. In 9th grade (2017-2018) student received 1 'A', 2 'B's, 2 'C's in core academic courses, and a Foreign language.
7. Student had no disciplinary issues in 9th grade.
8. In 10th grade year student had 33 unexcused absences/cuts before 2/2019 (most in the Foreign Language class due to late arrivals).

Scenario #6: You Be the Judge

Findings of Facts (cont'd):

9. In 2/2019 student arrived late to school and appeared under the influence of drugs. After further investigation and search student was found to be in possession of 3 cannabis vape devices and a large amount of cash. The student admitted to buying vape devices in school from another student with intention of reselling to others outside of school and off school property.
10. Student received a 3 day suspension. The school-based team performed a behavior/performance review (academic, behavioral, attendance, and health information); the team felt that the student was not *thought to have a disability*.
11. During the reinstatement meeting in 2/2019, the report was shared with parents. Referrals were also made for free drug usage counseling, addiction, and other social, emotional, mental health concerns.
12. Parents took information but did not act on the referral.

Scenario #6: You Be the Judge

Findings of Facts (cont'd):

12. In early March, student reported allegations of bullying during this school year and last year; however, student did not report it to anyone.
13. Parents requested an IEE in 3/2019 alleging that the student should have been identified with a disability. They also stated that the LEA did not respond to the *social, emotional, behavioral* needs of the student which led to bullying, anxiety, and decrease in executive functioning and impulsivity.
14. Teachers, administrators, counselor, and nurse each testified that they were not aware of, witnessed, experienced any SEB, bullying, anxiety, executive functioning distress, impulsivity, cutting, or eating disorders with student.
15. Teachers all testified that the student is bright, engaged in learning, and performs adequately and consistently to academic expectations.

Scenario #6: You Be the Judge

Findings of Facts (cont'd):

For your reference:

34 CFR 300.534(b)

22 Pa. Code 14.101(a)(2)

Scenario #7: You Be the Judge

Findings of Facts:

1. State: Pennsylvania
2. Grade: 3rd
3. Type of School: SD
4. Disability: Emotional Disturbance (Fall 2018)
5. An initial Evaluation was conducted by 2 school psychologists. A FBA was conducted with input from teacher and student. No formal classroom observation was done while completing the FBA.
6. Parents agreed with the ER at the time of the meeting.
7. IEP team recommended Itinerant LS, implementation for PBSP and counseling twice a week. Parents agreed to the NOREP but was hesitant about placement.

Scenario #7: You Be the Judge

Findings of Facts (cont'd):

8. As time went on, student's behavior increased in frequency (hitting/banging parts of body, crying, yelling, sitting on floor, threatening other students, and non-compliant with adults.
9. Student was often removed from class to deescalate (as per IEP); he began to miss instructional time. Interventions by school personnel were not always successful.
10. Over the next 2 months, there were changes made to the student's IEP & PBSP. However, the behavior did not change.
11. The LEA recommended FT/ES (through the local IU) with student participating with typical peers for certain subjects, lunch, recess, and support of a paraprofessional. The team did not consider any options other than FT/ES.

Scenario #7: You Be the Judge

Findings of Facts (cont'd):

12. Parents disapproved of the NOREP for FT/ES and requested an IEE. The District refused IEE.
13. The District also denied Parent's request for 1:1 stating that student would still likely need to be removed due for de-escalation of behaviors.

For your reference:

- 34 CFR 300.111(a)
- 34 CFR 300.304(b)
- 34 CFR 303(a)
- 34 CFR 304©(4)
- 22 Pa. Code 14.121-14.125

Scenario #7: You Be the Judge

Links for your convenience:

1. Office of Dispute Resolution

<http://odr-pa.org/subscribe-to-odr/>

2. Basic Educational Circulars

<https://www.education.pa.gov/PolicyFunding/BECS/Pages/default.aspx>

3. PDE/Bureau of Special Education

<https://www.education.pa.gov/K12/Special%20Education/Pages/default.aspx>

▶ You Be the Judge References:

1. *Woodland Hills School District*. 118 LRP 31490 (SEA PA 04/29/2018).
2. *Lawton and Johnson-Lawton ex rel. I.L. v. Success Academy Charter Schools, Inc.* 72 IDELR 176 (E.D.N.Y. 2018).
3. *Side by Side Charter School (CT)*. 73 IDELR 103 (OCRI. Boston (MA) 2018).
4. *K.N. and J.N. ex. J.N. v. Gloucester City Board of Education* 74 IDELR 73 (D.N.J.2019).
5. **Office of Dispute Resolution**
<http://odr-pa.org/subscribe-to-odr/>

