

Case Law & Compliance What Would You Do?

2019 Leadership Academy
Bedford Springs

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PaTTAN's Mission

The mission of the Pennsylvania Training and Technical Assistance Network (PaTTAN) is to support the efforts and initiatives of the Bureau of Special Education, and to build the capacity of local educational agencies to serve students who receive special education services.

PDE's
Commitment
to Least
Restrictive
Environment
(LRE)

Our goal for each child is to ensure Individualized Education Program (IEP) teams begin with the general education setting with the use of Supplementary Aids and Services before considering a more restrictive environment.

Disclaimer

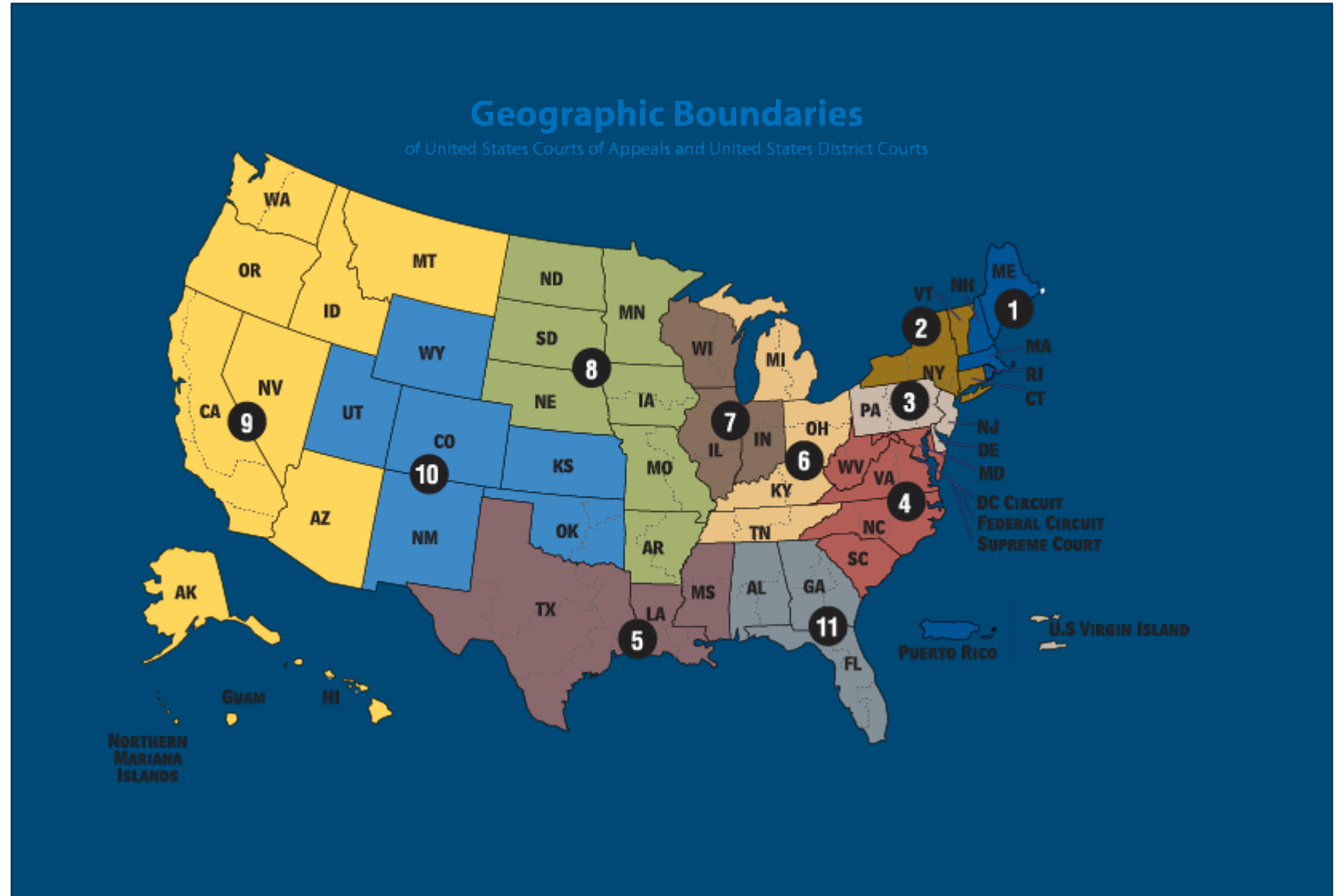


The contents of this professional development is **not** a substitute for legal counsel.

Legal Foundation

- Individuals with Disabilities in Education Act of 2004 (IDEA)
- 22 PA Code Chapter 14
- 22 PA Code Chapter 711
- US Court of Appeals for the Third Circuit
 - Pennsylvania
 - Delaware
 - New Jersey
 - Virgin Islands
- US Supreme Court
- Section 504 of the Rehabilitation Act

United States Court of Appeals Circuit Map



Key Components of Special Education Litigation

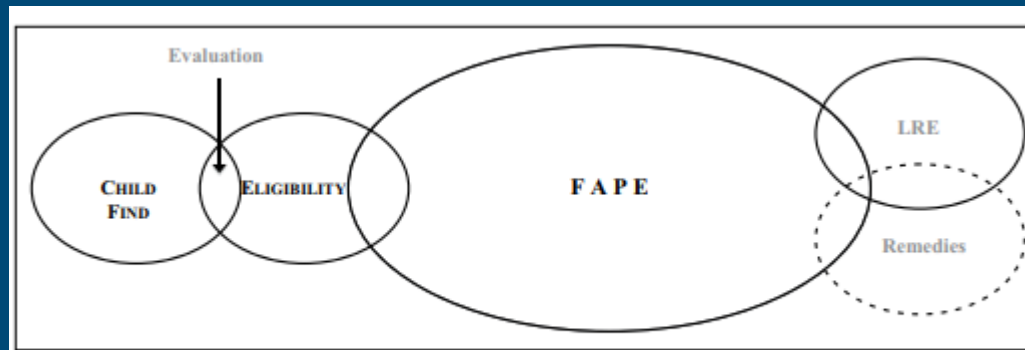


Figure 1. Key components of special education litigation.
Note. FAPE = free appropriate public education; LRE = least restrictive environment.

Zirkel (2015). Special Education Law: Illustrative Basics and Nuances of Key IDEA Components. *Teaching Exceptional Children*, 34(4) 263-275

Analysis



- If you were the hearing officer, what questions would you pose in order to draw a conclusion for the case?
- What legal framework governs consideration in this scenario?
- What past court case decisions may impact the hearing officer's decision?

Scenario #1

Scenario #1

Issues

- Appropriateness of evaluation and IEP
- Least Restrictive Environment
- Supplementary aids and services
- FAPE
- Compensatory Education

Essential Questions

- Did the district fail to conduct a proper evaluation?
- Was the proposed K IEP substantially inappropriate and therefore, not in compliance with LRE requirements?
- Was the implementation of the services in K a denial of FAPE?
- If so, is compensatory education to be awarded?

Read Scenario #1

Analysis

- If you were the hearing officer, what questions would you pose in order to draw a conclusion for the case?
- What legal framework governs consideration in this scenario?

Additional discussion at your table:

Based on the information provided, what suggestions would you make to the IEP team?

Legal Framework

- Burden of Proof
 - Burden of production
 - Burden of persuasion
- Court cases
 - Schaffer vs. Weast (US, 2005)
 - LE vs. Ramsey Bd of Ed (3rd cir, 2006)
 - TE vs. Cumberland Valley SD (US, 2014)
 - AS vs. Office for Dispute Resolution (Quakertown Community School District (Pa. Commw. 2014)



Legal Framework

- Substantive FAPE
- Procedural FAPE
- Court cases
 - Board of Education vs. Rowley (US, 1982)
 - Mary Courtney T vs. School District of Philadelphia (3d cir, 2009)
 - Endrew F. vs. Douglas County School District (US, 2017)
 - Winkelman vs. Parma City School District (US, 2007)

Legal Framework

- General Section 504 and ADA Principles
- Least Restrictive Environment
- Court Cases
 - Ridgewood vs. Board of Education (3d cir, 1995)
 - Ridley SD vs. MR (3d cir, 2012)
 - Oberti vs. BOE of Clementon School District (3d cir 1993)

What do you think?

1. **Yes** for all 4 questions
2. **No** for all 4 questions
3. **Yes** for A & B. **No** for C & D
4. **Yes** for A. **No** for B, C, and D
5. **No** for A & B. **Yes** for C & D



Conclusion

#3. Yes for A & B. No for C & D

Reason: The district's 2018 RR was not appropriate as it lacked specific information. The proposed IEP and NOREP for 2018-2019 was not appropriate relative to academics and LRE. A new evaluation has been ordered at public expense with specific timelines and a new IEP will be developed. No compensatory education will be awarded.

Based on the information provided, what suggestions would you make to the IEP team?

Scenario #2

Scenario #2

Issues

- Student disability categories
- Denial of FAPE
- Tuition reimbursement

Essential Questions

- Did the district fail to provide FAPE to Lia for the past 2+ years?
- Are the parents entitled to tuition reimbursement for the private tutoring they obtained for Lia?
- Was the assignment of the aide detrimental to Lia's educational progress?

Read Scenario #2

Analysis

- If you were the hearing officer, what questions would you pose in order to draw a conclusion for the case?
- What legal framework governs consideration in this scenario?

Additional discussion at your table:

What advice would you offer the LEA based on the content of the summary?

Legal Framework

- Burden of proof
- Eligibility for Special Education
- Court Cases
 - Schaffer vs. Weast (US, 2005)
 - LE vs. Ramsey BOE (3d cir, 2006)
- IDEA definition of disability categories
- All categories have the same special education rights regardless of disability; exception is children with ID, they have enhanced protections.



Legal Framework

- Denial of FAPE
 - IEP must be reasonably calculated to yield meaningful educational benefit
 - Not simply *de minimus* or minimal educational progress
- Court cases
 - Board of Ed vs. Rowley (US, 1982)
 - Mary Courtney T. vs. School District of Philadelphia (3d cir, 2009)
 - Andrew F vs. Douglas County SD (US, 2017)

Legal Framework

Burlington Carter "Test"

- 1) Was the district's proposed placement appropriate?; (if yes, stop here- no reimbursement)
- 2) If not, was the parents' unilateral placement appropriate (but with relaxed procedural standards for the parents); (if yes, go to step 3)
- 3) If so, do the "equities," such as the reasonableness of the cost in comparison to available private alternatives, warrant a reduction or elimination of the amount sought?

Legal Framework

- Compensatory Education
 - Does the LEA have knowledge of an inappropriate IEP?
 - If so, did it fail to correct the situation?
 - I PA, comp ed. is recognized through two different methods – hour-for-hour vs. “same position” method
- Court Cases
 - MC vs. Central Regional SD (3d cir, 1996)
 - Jana K. vs. Annville Cleona SD (US, 2014)

Legal Framework

- Tuition Reimbursement
- Court Cases
 - Burlington School Committee vs. Department of Education of Massachusetts (US, 1985)
 - Florence County SD vs. Carter (US, 1993)

What do you think?



1. **Yes** to A, B, and C.
2. **No** to A, B, and C.
3. **No** to A & B **Yes** to C
4. **Yes** to A & B **No** to C

Conclusion

#2 No to A, B, and C.

Reason: The parents did not prove that the district denied a FAPE to the student for the periods in question. The parents are not entitled to tuition reimbursement, and the record does not support the parents' claim regarding the students' aide.

What advice would you offer the LEA based on the content of the summary?

Scenario #3

Scenario #3

Issues

- FAPE
- Discrimination based on disability
- Compensatory Education

Essential Questions

- Did the district meet its obligation to provide FAPE in Liam's Kindergarten year?
- Did the district meet its obligation to provide FAPE for first grade?
- Did the district discriminate against him due to his disability?
- If not for either or both grades, is Liam entitled to any compensatory education? If so, for what grade? Why?

Read Case #3

- If you were the hearing officer, what questions would you pose in order to draw a conclusion for the case?
- What legal framework governs consideration in this scenario?

Additional discussion at your table:

Based on the information provided, what suggestions would you make to the IEP team?

Legal Framework

- FAPE
 - IEP must yield meaningful educational benefit
 - significant learning, not simply *de minimus*
- Court Cases
 - Board of Education vs. Rowley (US, 1982)
 - Endrew F vs. Douglas County (US, 2017)

Legal Framework

- Discrimination based on disability
- Court Cases
 - P.P. vs. West Chester Area SD (3rd cir, 2009)
 - S.H. vs. Lower Merion SD (3rd cir, 2013)



Legal Framework

- Compensatory Education



- Court Cases

- Lester H. vs. Gilhool (3rd cir, 1990)
- Big Beaver Falls Area SD vs. Jackson (Pa. Commonw., 1992)
- Ridgewood BOE vs. N.E. (3rd cir, 1999)
- M.C. vs. Central Regional SD (3rd cir, 1996)

What do you think?

1. **Yes & Yes & No & No:** The district met its FAPE obligation for K & 1st and he is not entitled to comp. ed. There was no deliberate indifference/discrimination evident.
2. **Yes & No & Yes & Yes:** The district met its FAPE obligation for K, but *not* for 1st grade. He is only entitled to comp ed. for 1st grade. The district did act with deliberate indifference and thus discriminated against him per section 504.
3. **No & No & Yes & Yes:** The district did not meet its FAPE obligation for either K or 1st grade. He is entitled to comp ed. for parts of both years. The district did act with deliberate indifference due to Liam's autism.
4. **Yes & No & No & Yes:** The district did not meet its FAPE obligation for 1st grade. He is entitled to comp ed. for part of the year. There is no evidence of deliberate indifference by the district due to Liam's autism.

Conclusion

#4. Yes & No & No & Yes: The district did not meet its FAPE obligation for 1st grade. He is entitled to comp ed. for part of the year. There is no evidence of deliberate indifference by the district due to Liam's autism.

Reason: The district met its obligations to the student in Kindergarten, but denied the student FAPE in 1st grade through its use of an impermissible restraint. The district did not discriminate against the student based on his disability. The student was awarded 200 hours of compensatory education.

Based on the information provided, what suggestions would you make to the IEP team?

Table Talk



- Have you been to due process?
- If so, what did you learn from it?
- Did you find the experience to be positive or negative? Why or why not?

The Office for Dispute Resolution



- Great resource for information on the legal process and options in PA for LEAs and families
- Houses IHO decisions in PA
- Subscribe to ODR to receive recently posted decisions in PA – see bottom area of home page
- ODR Website - <https://odr-pa.org/>

THANK YOU

For Your
Attendance
And
Your Commitment to Our Children!



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