LEGAL UPDATE
IOWA DEPARTMENT OF EDUCATION SPECIAL EDUCATION SYMPOSIUM

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I. Free Appropriate Public Education: Endrew F. and Beyond


It is the foundation of the IDEA that each child is entitled to special education:

- At public expense, under public supervision;
- Meets the standards of the SEA;
- Includes an appropriate education in the state involved; and
- Provided in conformity with an IEP that meets the IDEA’s requirements.

This must be done in the least restrictive environment in which the child’s needs can be appropriately met. For more than 35 years, this analysis has been governed by the U.S. Supreme Court’s decision in Rowley v. Board of Education of Hendrick Hudson County, 458 U.S. 176 (1982). In Rowley, the Court determined that a public school has satisfied its obligation to provide a FAPE if it develops an IEP that is procedurally compliant and provides the student with access to some educational benefit. See Board of Education v. Rowley, 458 U.S. 176 (U.S. 1982). In the years following the Rowley decisions, the federal circuit courts of appeals split on what the Court meant by “some educational benefit.” Several courts determined that FAPE required that the student receive a meaningful benefit in light of the child’s individual potential. Other courts, including the Eighth Circuit, ruled that all that was required was some level of educational benefit. The Tenth Circuit, where the Endrew F. case originated, held that a school needed to offer an IEP that provided merely more than a “de minimis” (minimal) benefit to the student in order to meet the school’s FAPE obligations.

In 2016, the U.S. Supreme Court agreed to revisit the issue of the appropriate substantive standard for FAPE, and granted certiorari in the case of Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988 (2017). Endrew, attended public school from Pre-K through 4th grade. Id. at 996. He displayed a number of strengths, but also demonstrated significant behaviors that interfered with learning, including screaming, climbing over furniture and other students, and
occasionally eloping from school. *Id.* He also experienced serious fears and anxieties of commonplace things. *Id.*

Endrew’s parents believed that his progress had stalled. *Id.* His IEP “largely carried over the same basic goals and objectives from one year to the next,” despite Endrew’s lack of meaningful progress. *Id.* The parents wanted a total overhaul of the program, but the school proposed an IEP for Endrew’s fifth grade year that was very similar to his past IEPs. *Id.* In the fall of 2011, the parents exercised their right to unilaterally place Endrew at Firefly Autism House, a private school specializing in serving children with autism. *Id.*

Firefly developed a BIP and added “heft” to Endrew’s academic goals. *Id.* at 997. Within months, Endrew’s behavior improved and he began making some progress on his academic goals as well. *Id.*

The parents again met with the Douglas County School District in November 2011. *Id.* The District offered roughly the same IEP Endrew had in previous years, despite the success Endrew had under Firefly’s approach. *Id.* In February 2012, the parents filed a due process complaint seeking tuition reimbursement for the placement at Firefly. *Id.* In order to prevail, the parents were required to first prove that the District had failed to offer Endrew a FAPE. The District prevailed at the hearing, and on appeal in the federal district and circuit courts, all of which applied the Tenth Circuit’s longstanding standard that FAPE required a student receive an IEP that provided a “merely more than de minimis” benefit. *Id.*

The U.S. Supreme Court reversed the lower court’s ruling. The Court found that the District’s reliance on *Rowley* was out of context, because *Rowley* dealt with a student who was performing at or above grade level. The Court also noted that its *Rowley* decision specifically declined to establish a uniform test for FAPE. The Court clarified that “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Id.* at 999.

The Court explained that “[t]he ‘reasonably calculated’ qualification reflects recognition that crafting an appropriate [IEP] requires a prospective judgment by school officials.” This will be a “fact intensive exercise” informed by expertise of school and input of parents or guardians. *Id.* The Court reiterated the *Rowley* Court’s comment that “[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal.”

According to the Court, “[t]he IEP must aim to enable the child to make progress.” *Id.* This reflects Congress’s “broad purpose” in adopting this “ambitious” piece of legislation. *Id.* The Court believed that a substantive standard that ignored progress “would do little to remedy…academic stagnation.” *Id.* The Court emphasized that children with disabilities should receive education in the regular classroom “whenever possible” because “progress through this system is what or society generally means by an ‘education.’ And access to an ‘education’ is what the IDEA promises.” *Id.*

The Court considered two basic categories of special education students: “For a child fully integrated in the regular classroom, an IEP typically should…be reasonably calculated to enable
the child to achieve passing marks and advance from grade to grade.” *Id.* at 1000. On the other hand, the IEP of a student for whom grade level performance is not a reasonable expectation must still be “appropriately ambitious in light of [the child’s] circumstances.” *Id.* In the Court’s words, “The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.*

The Court specifically declined the parents’ request to go further. The *Endrew* Court specifically declined the parents’ request to go further than this in establishing a higher bar for FAPE. The parents requested a FAPE standard that would provide a child with opportunities that are “substantially equal to the opportunities afforded children without disabilities,” but the Court “decline[d] to interpret [FAPE] in a manner so plainly at odds with” *Rowley.* *Id.* at 1001.

Finally, the Court reiterated the importance of giving deference to the “expertise and exercise of judgment” of school authorities. Yet, the Court stated, reviewing courts “may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions.” *Id.* at 1001-02.

**B. U.S. Courts of Appeals Decisions**


I.Z.M. suffers from severe vision problems that entitled him to special education. His IEP provided that he would use Braille for all classroom assignments and instruction. At times, I.Z.M. was not provided materials in Braille and substitute methods were used including large letter texts and aids. I.Z.M.’s parents became upset with the district’s failure to comply with the IEP and filed a complaint.

The ALJ concluded that the district provided I.Z.M. a FAPE and dismissed the complaint. Parents appealed to the district court, which affirmed the ALJ’s ruling. Parents again appealed and the appellate court affirmed. Although Braille materials were not provided 100% of the time, the record showed that the district provided Braille materials and made arrangements when Braille materials were not available. The district provided sufficient materials for I.Z.M. to attain the communicative proficiency required by state law. The district court appropriately affirmed the ALJ’s decision where the ALJ cited the regulation at issue and expressly concluded that the district took all reasonable steps to provide Braille materials in a timely manner.

2. *Mr. P v. West Hartford Board of Education,* 885 F.3d 735 (2d Cir. 2018)

During his sophomore year of high school (December 2011), Mr. P. was diagnosed with High Functioning Autistic Spectrum Disorder/Asperger’s Syndrome; a processing disorder; and a psychotic disorder. The school made accommodations for Mr. P., including excusing absences, removing penalties for late work, and providing a tutor. Mr. P. was placed him in special education his junior and senior years of high school. During his junior year, Mr. P. attended an alternative education program called STRIVE, where he was provided counseling and a more structured environment. Mr. P. began attending the regular high school part time during his senior year, but returned to STRIVE full-time when he experienced setbacks. Towards the end of his senior year,
Mr. P.’s parents disputed the school district’s proposed post-secondary special education program and requested compensation for two years of a private program. The district’s proposal included attending ACHIEVE, where Mr. P. would have access to counseling, vocational training, the opportunity to attend community college classes, and public transportation training. The district refused and the parents subsequently challenged the district’s treatment of Mr. P. from his sophomore year of school through the rejection of the parents’ request for compensation.

The ALJ denied the parents’ challenge. The ALJ’s decision was affirmed by the district court again by the Second Circuit. The Second Circuit reasoned that the education program provided by the school “was reasonably calculated to enable M.P. to make progress appropriate in light of his circumstances.” The court further reasoned that Mr. P.’s success at STRIVE, including his completing all graduation requirements and scoring well on standardized tests was evidence that Mr. P. made appropriate progress as a result of the district’s IEP. It further found that placement in ACHIEVE was “reasonably calculated to enable [M.P] to make progress appropriate in light of his circumstance.” It reasoned that ACHIEVE was similar to STRIVE, where Mr. P. had significant success.


N.P. is a thirteen-year-old boy who is intellectually gifted, yet suffers from learning disabilities including dyslexia, central auditory processing disorder, and attention deficit hyperactivity disorder. In 2012, while N.P. was in third grade, N.P.’s parents met with school officials to create an IEP for N.P. The program included three thirty-minute sessions per week for specialized instruction in reading, writing, and math. At the end of third grade, N.P.’s parents placed him in a private school for children with learning disabilities, where he thrived. N.P. became depressed when he returned to public school when he began fourth grade. Parents and staff met again and revised N.P.’s IEP, placing him in the school’s gifted and talents program while at the same time increasing his specialized instruction in math, writing, science, and social studies. Apparently dissatisfied with N.P.’s progress, N.P. returned to private school for his fifth-grade year. The parents requested reimbursement for the private school’s tuition, alleging that the school had failed to provide a FAPE for N.P. An ALJ found in favor of the school.

The ALJ found in favor of the school district. The district court reversed. The school appealed. The appeal was stayed until after the Supreme Court’s decision in *Endrew F*. Following *Endrew*, the Fourth Circuit remanded the case back to the district court, both because the district court failed to give proper weight to the ALJ’s ruling and because neither the district court nor the ALJ had the opportunity to weigh the evidence in light of the *Endrew* decision.


M.L. was born with Down Syndrome and subsequently considered a child with a disability under the IDEA. M.L. and his family are members of the Orthodox Jewish faith. In 2012, M.L. and his parents met with school officials to establish an IEP so M.L. could attend public school. School officials created an IEP, which focused on repetition and consistency. M.L.’s parents rejected the plan because it did not provide instruction related to the preparing to live in the Orthodox Jewish
community. Parents filed a due process complaint requesting that the school give instruction in Orthodox Jewish studies.

The ALJ found in favor of the school. The district court affirmed. Plaintiffs appealed. The Fourth Circuit had to decide whether a school fails to provide a FAPE when the proposed IEP does not include religious or cultural instruction, but is adequate in all other regards. The Fourth Circuit ultimately affirmed the district court. It reasoned that requiring the school to give religious and cultural instruction would be akin to adding an additional requirement to the IDEA (also likely an issued under the First Amendment’s Establishment Clause). Finally, the court explained that the relevant circumstance when considering whether the IEP was adequate was M.L.’s disability, not his membership in the Orthodox Jewish faith. The court stated that it did not believe that the Endrew F. decision impacted the analysis in this case.

5.  


C.G. is a child diagnosed with autism. During the 2011-2012 and 2012-2013 school years, the Waller Independent School District (WISD) administered an IEP to C.G. Her program included instruction in the special education classroom, speech therapy, and occupations therapy based on recommendations and goals established by her parents and education professionals. Dissatisfied with her progress, C.G.’s parents rejected WISD’s IEP for the 2013-2014 school year and enrolled C.G. in a private school. C.G.’s parents sought a due process hearing to obtain reimbursement for school tuition.

The ALJ ruled in favor of the district. Parents appealed to the district court, which granted WISD’s motion for summary judgment. Parents appealed to the appellate court, which affirmed the district court. The Fifth Circuit found that the district court had correctly determined that the IEP provided an actual educational benefit and that the plan was appropriately ambitious for C.G.’s circumstances.

6.  

Rachel H. v. Dep’t of Educ., 868 F.3d 1085 (9th Cir. 2017)

Rachel is a student with Down syndrome. Rachel spend ninth grade at a private school paid for, in part, by the Hawaii Department of Education. In May of her ninth grade year, Rachel’s parents met with school officials to formulate the IEP for the following year. School officials determined that Rachel would no longer qualify for tuition for private school and that she would attend public school. The public school was never identified, but parties understood that the school would be Kalani High School. Rachel’s father notified school officials that his family would be moving and that Kalani High School would be too far for Rachel to attend. School officials informed him that the IEP was not unique to any particular school and that if he provided a new address they would identify a school that could implement the IEP. Mr. H. never provided the information and filed a due process complaint, alleging that the school’s failure to identify a school in the initial IEP constituted a procedural denial of FAPE.

The ALJ concluded that Rachel was entitled to attend Kalani High School until a new school could be identified and ruled for the district. The district court affirmed. The parents appealed and the appellate court affirmed. The Ninth Circuit considered whether an IEP that does not specify a
specific school still satisfies the regulatory requirement that an IEP specify a location. The court held that “location” does not require naming a specific school. It reasoned that the IDEA does not define location and that the ordinary meaning of location as a specific place does not necessarily mean a specific school. Further, the U.S. Department of Education interpreted location as the type of environment the student would be in. It accordingly concluded that Rachel was not denied a FAPE.

7.  

**M.C. v. Antelope Valley Union High School District, 858 F.3d 1189 (9th Cir. 2017)**

M.C. suffers from a genetic disorder that made him blind. M.C.’s mother met with school officials to establish an IEP. M.C. signed the IEP, but subsequently filed a due process complaint alleging that the district committed procedural and substantive violations of the IDEA.

The ALJ ruled in favor of the school district and the district court affirmed. The Ninth Circuit reversed and remanded for further evaluation in light of the *Endrew F.* decision. The Ninth Circuit found that the school district’s failure to adequately document the TVI services and AT devices offered to M.C. violated the IDEA and denied M.C. a FAPE. Because the school district failed to adequately document the services provided to M.C., the district must prove that the services it offered were reasonable. The court remanded to the district court for this determination. The court also remanded on the substantive issue for further fact finding in light of the *Endrew F.* decision.

C.  

**United States District Court Decisions**

1.  


Plaintiff is the parent of a child (F.M.) with ADHD, dyslexia, and physical ailments that made learning more difficult. F.M.’s first grade teacher noticed that F.M. was academically behind her classmates. The teacher, assistant principal and Ms. M. all met to discuss F.M.’s progress. It was decided that F.M. would remain in first grade and would receive additional support in the form of tutoring three days a week and classes in English-as-a-second language (ESL) (even though F.M. was not exposed to a different language at home). Ms. M. subsequently requested an evaluation of F.M. The school assessed F.M.’s hearing, speech/language, academic achievement, behavior, and environmental concerns and found that she was eligible for special education services. Ms. M. met with school personnel, including F.M.’s teacher, the assistant principal, and the school’s special education teacher. Together, they formulated an IEP that included several hours of special instruction each week to focus on articulation, math, behavior, and fluency. Toward the end of the school year, Ms. M. was informed that F.M. would have to repeat first grade. Ms. M. disagreed with the decision and tried to tutor F.M. over the summer, but F.M. failed to achieve the requisite testing results to move on to the second grade. F.M. started the school year, but her parents later withdrew her and enrolled her in an online education program. Plaintiff subsequently filed suit, alleging that the school board had failed to comprehensively evaluate F.M. and that her IEP was not reasonably calculated to provide her with a FAPE.

The ALJ ruled in favor of the school district. Plaintiffs appealed to the district court. The district court ruled that the hearing officer’s decision was supported by the record and affirmed. The court
ruled that the plaintiff had failed to demonstrate that F.M.’s IEP was not reasonably calculated to provide her with a FAPE. It reasoned that the IEP targeted four areas of improvement and stated F.M.’s level of achievement as well as goals for progress. It rejected plaintiff’s argument that because the benchmarks would not result in F.M. advancing to the next grade, they were not reasonably calculated to provide F.M. with a FAPE. The court reasoned that F.M. was well behind her class when she entered first grade and therefore distinguishable from other first graders. While a typical first grader may be expected to progress to second grade, it was not unreasonable, based on F.M.’s deficiency, that her goals would be less ambitious than other first graders.


Student was diagnosed with Down syndrome. Student began attending Ashland Ranch after completing preschool. An IEP was drafted that included 105 minutes of specialized instruction and between 40 and 79 percent of his day in a regular classroom. Parents initially objected to amendments to the IEP that included more specialized instruction and less regular classroom time. Eventually, the school district issued a later stating that student would be moved to a different elementary school where he would attend an alternative program. Parents subsequently brought a due process action.

The ALJ found for the district. Parents appealed to the district court, which affirmed. The court held that the least restrictive environment was not necessarily Ashland Ranch. It reasoned that the IEP stipulated that Student would meet with peers similarly situated. Ashland Ranch had no other students in Student’s position. It further explained that the district was justified to move Student to a location that was more appropriate than Ashland Ranch. Finally, the court held that just because parents were satisfied with Student’s progress at Ashland Ranch, did not mean that Student was receiving a FAPE at Ashland Ranch. It reasoned that the state had the power to provide handicapped children with a more appropriate education than that proposed by the parents. It cited *Endrew F.* and explained that the parents’ satisfaction with *de minimis* progress does not excuse a school from implementing an IEP that was reasonably calculated to enable Student from making progress.


M.S. is a child with speech/language disabilities. These disabilities were first evaluated in 2009, when M.S. was two years old by the Falcon School District. It was decided that M.S. qualified for special education and from 2009 to 2012, IEPs were developed with a focus on M.S.’s language and speech skills. M.S. was again evaluated in October 2012, shortly after he entered kindergarten. An IEP meeting was held in November 2012 to review the results. Based on the evaluation, the district determined that M.S. no longer needed special education. The special education director of the Falcon School District was not present. M.S. progressed through kindergarten and first and second grade with average academic achievements. In July 2014, M.S.’s parents requested an IEE. The district responded by agreeing to evaluate M.S. again in the fall, as long as the parents granted permission. If they were dissatisfied with the evaluation, the district would then pay for an IEE. The parents requested the offered evaluation, but failed to grant permission. In November 2014,
parents filed a due process complaint, alleging that the absence of the director’s presence at the 2012 IEP meeting and failure to fully evaluate M.S. denied him a FAPE.

The ALJ found in favor of the district. Plaintiffs appealed to the district court. The district court granted district’s motion for summary judgment concerning the absence of the director and dismissed without prejudice plaintiff’s claim concerning the district’s failure to evaluate M.S. The court held that the absence of the director did not deny M.S. a FAPE. It reasoned that plaintiff failed to object to the composition of the meeting at the time and by waiting nearly two years to object that she had waived the claim. It further reasoned that plaintiff’s delay in bringing the claim suggests that M.S.’s education was satisfactory and that M.S. was not denied a FAPE. It also pointed to M.S.’s academic achievement (consisting of C or higher letter grades) as evidence of a FAPE. The court additionally held that plaintiff’s failure to provide consent for evaluation or an IEE disqualified her from bringing suit because she did not exhaust all of her administrative remedies. Failure to exhaust these remedies deprived the court of jurisdiction on the matter. However, the court ruled that even if this were not an obstacle, plaintiff would still lose because the district satisfied its responsibilities under the IDEA when it concluded that M.S. no longer needed special education and offered to evaluate M.S. M.S.’s progress did not signal a need for the district to make its own evaluation independent of the parents’ incomplete request.


L.C. is an eleven-year-old child with disabilities that qualify him for special education. L.C.’s disabilities limit his communication to grunts and laughs, severely impair his motor skills, and limit his vision. L.C. attended first grade in the Hendry County School District (HCSD), where he was evaluated and an IEP was established. Early IEPs showed that L.C. was making good developmental progress, however further evaluation revealed that L.C.’s teachers were assisting him in his evaluations and that he did not display many of the abilities listed in his IEPs. Because of the overstated nature of his abilities, L.C.’s parents requested that he be placed in general education classes. However, L.C. was unable to demonstrate that he understood what was being taught and he returned to a special education classroom. In 2012, L.C.’s parents learned about a private school, called Peace by Piece that specialized in special education. L.C. met with school officials, who agreed Peace by Piece would be a better environment for L.C. A scholarship was obtained for L.C. and he was enrolled in the private school. For the meantime, the HCSB provided transportation to the new school, even though L.C. was no longer enrolled in the district. When a new special education director was appointed, she informed L.C.’s parents that the district would no longer provide transportation for L.C. As a result, L.C. returned to the HCSB the following school year. Officials met and developed an IEP. Plaintiffs filed a due process complaint, alleging that IEPs from 2011 to 2013 denied L.C. a FAPE.

ALJ ruled in favor of the district. The district court affirmed.

The court held that the ALJ properly determined that none of the IEPs were deficient to the point of depriving L.C. a FAPE. It reasoned that L.C. had demonstrated appropriate progress in communication, math, reading, and physical skills. The IEPs had established L.C.’s present abilities and set goals to improve them. In addition, the IEPs included the integration of technology
to assist L.C. with learning. Evidence showed that a competent team addressed L.C.’s needs whenever IEP meetings were held.


J.R. is a seventeen-year-old student who qualifies for special education based on intellectual, hearing, and health disabilities. J.R. spent most of his education at a private school that specialized in educating students with behavioral challenges. While transitioning to high school, one of J.R.’s doctors recommended a switch from the high school diploma track to a certificate track. After receiving the recommendation, the school district decided to reevaluate J.R. J.R.’s IEP team reviewed the results and concluded that J.R. should be moved to a certificate program. Over the objections of J.R.’s parents, the IEP team decided to place J.R. in a public school (Rock Terrace School or “RTS”) that offered a certificate program. Rather than allow him to attend RTS, J.R.’s parents enrolled J.R. in a private school (Ivymount) and filed a due process complaint for reimbursement.

The ALJ found the district’s placement of J.R. in RTS was reasonably calculated to provide a FAPE. Plaintiffs appealed to the district court. The district court affirmed. The court held that the ALJ’s determination was reasonable. Parent’s arguments that the ALJ failed to consider their own witnesses was misplaced because the witnesses’ testimony focused on J.R.’s progress at Ivymount, rather than the sufficiency of RTS. Previous failure to achieve academic improvement was the result of a misdiagnosis, rather than ineffective efforts on the IEP committee. There is no evidence to suggest that RTS would not have produced the same results as Ivymount.


Student is an eleven-year-old girl with Down syndrome. From kindergarten to third grade, Student was educated in and out of the mainstream classroom. She exhibited aggressive behavior that precluded her spending significant time with a general classroom. IEPs during that period recognized her behavioral difficulties and made goals to improve them. From third to fourth grade, Student’s behavior worsened. During her fourth grade year (2015) Student was physically restrained for hitting, kicking, and throwing objects at others. Student’s behavior worsened throughout the school year, with Student being suspended for hitting others and sent home early for the same. Student began wetting herself while at school. Several meetings occurred during the school year between Student’s parents and school officials where various behavioral intervention plans and IEPs were discussed. An IEP in December increased time in the special education classroom and added an additional behavioral goal. Parents and the district were never successful in agreeing to a proposed IEP and parent filed a due process complaint. Plaintiff alleged that the district was not providing adequate information for plaintiff to understand Student’s educational challenges and that the district was denying Student a FAPE.

ALJ found for the district. Plaintiff appealed and the district court affirmed. The court held that the ALJ properly considered the evidence on record and concluded that a FAPE had been provided by the district. Plaintiff’s argument that a teacher’s failure to attend one IEP meetings did not undermine the likelihood of the IEP to provide a FAPE. Plaintiff was provided with raw data concerning Student’s behavior including behavior charts. Plaintiff’s argument that increasing
special education time without corresponding behavioral goals is unpersuasive because the increase in time was a strategy to improve Student’s behavior by reducing afternoon outbursts. Increased time outside of the mainstream classroom did not encroach on the least restrictive environment because removing Student from the environment was most likely to implement the IEP. Plaintiff failed to demonstrate that the district materially deviated from the approved IEP.


Trey is a student with disabilities that qualify him for special education. In 2011, Trey withdrew from the Winston-Salem/Forsyth County School District (WS-FCS) to attend a private school. Under a settlement agreement, the WS-FCS district agreed to reimburse Trey’s past educational expenses. The settlement agreement stipulated that a private placement was approved for previous years, but that it was not the current educational placement. Trey was evaluated and IEP meetings were held when Trey returned to public school in 2013. The first IEP included various developmental goals. Plaintiffs were concerned with the qualifications of educators to implement and achieve the goals. The IEP also outlined technological aids and accommodations that Trey would be given. Additional evaluations led to minor adjustments to the IEP. Plaintiff presented additional reports that tended to show that Trey would need a more intensive program than a public school could provide. The district did not adjust the IEP to provide private instruction. Plaintiffs rejected the IEP and filed a due process action.

The ALJ found for the district. Plaintiffs appealed to the district court. The court remanded in light of *Endrew F.*


M.M. is a thirteen-year-old boy. For his entire education he has been identified as having both global developmental delays and autism. In fifth grade, M.M. was placed in an intensive support program (ISP) as opposed to an autism classroom. During that time, M.M. began developing a form of communication where he would use pictures to adults to convey if he wanted a snack. In May 2015, an IEP team met to discuss M.M.’s IEP for his sixth grade year. The team decided that M.M. should continue in the ISP classroom. Additionally, the IEP lowered the amount of speech and language therapy and did not specify that the speech and language therapist be trained in working with non-speaking children with autism. M.M.’s parents opposed his placement in the ISP classroom and withdrew him from school because they believed that the school was not offering him a FAPE. They subsequently filed a due process hearing.

The hearing officer ruled for the parents. It found that the IEP was not reasonably calculated to provide some educational benefit and that M.M. was denied a FAPE from August 2015 until January 2016, when he was withdrawn from school. The district appealed and the district court reversed. The court held that he IEP was reasonably calculated to enable M.M. to progress in light of his disabilities. It reasoned that M.M.’s IEP included autism specific initiatives as well as curriculum designed for students with global development delays. Testimony showed that both curricula were essential to M.M.’s educational progress. It further reasoned that M.M.’s sixth grade
IEP was similar to his fifth grade IEP, which led M.M. to make meaningful progress. Evidence that M.M. progressed better under the instruction of a tutor at home did not indicate that the IEP was not reasonably calculated to provide M.M. an educational benefit.


M.S. is a child with ADHD, developmental coordination disorder, and Tourette’s syndrome. M.S. attended school in the Yorktown Central School District from kindergarten through fifth grade. At the end of her second grade year (May 2012), M.S. was deemed eligible for special education and an IEP committee met to develop an IEP. The IEP recommended integrated co-teaching and occupational therapy. The committee met again in March 2013 to develop the IEP for fourth grade. By this time, M.S. had shown signs of struggles in reading, math, and writing. The IEP recommended special classes for reading, writing, and math. It also recommended small group occupational therapy twice a week. In March 2014, plaintiffs had M.S. evaluated for auditory-language processing. The results revealed that M.S. was struggling with auditory reasoning ability. The evaluator recommended speech and language therapy. The committee convened in June 2014 to discuss the results as well as the district’s own findings. A new IEP was developed that included speech and language therapy. Further evaluations by the district and plaintiff revealed that M.S. was far behind students of her same grade. Meetings were held in 2015 and a new IEP was developed that included special education classes in math, English, social studies and science; small group reading class; small group class for skills; small group weekly occupational therapy; small group speech/language therapy; and small group counseling. Plaintiff filed a due process complaint based on M.S.’s failed development between 2014 and 2016.

The ALJ determined that M.S. was provided a FAPE for the 2014-2015 school year, but not the 2015-2016 school year. Defendant appealed to the state review officer, who found for the district on both issues. Plaintiff appealed and the district court affirmed. The court held that the ALJ’s conclusions were supported by the record and affirmed. It reasoned that the IEP developed for the 2014–2015 school year considered the results of both the district and parents’ evaluations and included additional aid and instruction. The adjustments were reasonably calculated to provide a meaningful educational benefit. It further reasoned that despite test results to the contrary, M.S. had made progress under the previous year’s IEP and that the small adjustments made for the 2015–2016 school year were reasonably calculated to provide a meaningful educational benefit.


Juliet is a 21-year-old woman with Down syndrome and an expressive language disorder who resides in the Hampton Township School District. From 2012 to 2016, Juliet attended high school in the district. Each year, an IEP was developed for Juliet. At the urging of her parents, Juliet’s IEPs focused on educational goals, rather than life skills and vocational programming. Juliet remained eligible for special education instruction in the district after her graduation. In 2016, an IEP meeting was held to discuss Juliet’s transition out of high school. The district sought to keep Juliet at the high school and focus on transition, the Genivivas urged enrollment in the Program, an education program held at a nearby university campus that focused on academic skill, vocational training, public transportation training, and social skills. In June, the Genivivas
expressed an intent to file a due process complaint against the school district, seeking reimbursement for tuition and travel expenses to the Program. They did so in August.

The ALJ ruled for the school district. The parents appealed and the district court affirmed, holding that the IEP was reasonably calculated to provide Juliet with meaningful educational progress. It reasoned that Juliet was in need of education in the area of general life skills and that the district’s life skills classroom was equipped to provide the needed education. In the life skills classroom, Juliet could learn skills related to food preparation, laundry and cleaning.


D.W. was identified as having speech/language disabilities and ADHD and subsequently entitled to special education. Student attended the district’s schools from first to seventh grade. At the beginning of the eighth grade school year, Student’s parents withdrew Student form the district and placed him in a private school. Parents sought tuition reimbursement. Parents initially settled with the district, and entered into an agreement wherein he district would provide tuition for Student’s eighth and ninth grade years. After his ninth grade year, Student would be evaluated. In the spring before his tenth grade year (2015), Student’s parents made a tuition payment in advance to reserve a spot for Student at the private school for his tenth grade year. In spring 2015, Student was evaluated by the school district. An IEP was developed that included ten goals related to writing, organization, speech, language, reading, and math. The IEP recommended that Student attend the district’s public high school and be enrolled in a regular education program for 67% of the day. Parents rejected the recommendation. Additional evaluations were conducted over the summer, but the recommendation that Student attend the regular high school did not change. Parents rejected the IEP and brought a due process claim seeking tuition reimbursement.

The ALJ concluded that the IEP was not reasonably calculated to yield meaningful education benefits to Student. The district appealed and the district court affirmed, concluding that the IEP did not offer a FAPE. It reasoned that the hearing officer’s emphasis on the fact that the IEP lacked baseline data for any of the ten goals was appropriate and that the lack of data made the goals insufficient to provide guidance to teachers regarding Student’s specific needs.


Student attended district schools from kindergarten to seventh grade. Throughout his education, Student has struggled academically. In 2012, while Student was in fifth grade, he was offered an IEP and placed in special education. The IEP included special education classes, emotional support, and speech and language support. A new IEP was offered in October 2013 that provided additional aggressive behavior support. Student was reevaluated in March 2014 and a new IEP was introduced in April. Despite not making much progress, the new IEP did not change significantly. In February 2015, another IEP meeting was held at Student’s parent’s request. Additional learning support was added to the IEP. Student was reevaluated in May 2015 and a new IEP was developed in June. In August, the IEP was modified yet again, and placed Student in a new school. Parents subsequently filed a due process complaint.
Hearing officer ruled in favor of the Student. The school district appealed and the district court affirmed. The district court held that the IEP was not reasonably calculated to allow Student to make behavioral progress in light of his circumstances. It reasoned that the IEP did not adequately address Student’s behavioral issues in a consistent manner. It also held that the district failed to identify Student’s learning disabilities in a timely manner. It reasoned that evaluations in 2011 and 2014 were not comprehensive enough to discover Student’s learning disability. Specifically, it relied on the hearing officer’s observation that the district knew about Student’s learning struggles and below-grade test scores but failed to identify Student’s learning disability. Finally, the court held that the academic aspects of the IEP failed to provide a FAPE. It reasoned that Student’s progress was so incremental that there was no reason to believe that Student could attain the goals set in the IEP.

II. THE YEAR IN REVIEW: OTHER CASES OF INTEREST

A. Another Major Supreme Court Case!

Fry v. Napoleon Community Schools, 137 S. Ct. 743, 746 (2017): E.F. is a child with a severe form of cerebral palsy. A trained service dog named Wonder assists her with various daily life activities. When E.F.’s parents, sought permission for Wonder to join E.F. in kindergarten, officials at Ezra Eby Elementary School refused. The officials reasoned that the human aide provided as part of E.F.’s individualized education program rendered the dog superfluous. In response, the Frys removed E.F. from Ezra Eby and began homeschooling her. They also filed a complaint with the Department of Education's Office for Civil Rights (OCR), claiming that the exclusion of E.F.’s service animal violated her rights under Title II and § 504. The school sought to dismiss the claims because administrative remedies were not yet exhausted. The United States Supreme Court granted review to clarify the circumstances under which exhaustion was required. The exhaustion rule hinges on whether a lawsuit seeks relief for the denial of a FAPE. If a lawsuit charges such a denial, the plaintiff cannot escape the exhaustion rule merely by bringing her suit under a statute other than the IDEA. But if, in a suit brought under a different statute, the remedy sought is not for the denial of a FAPE, then exhaustion of the IDEA’s procedures is not required.

The Fry test: First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school—say, a public theater or library? And second, could an adult at the school—say, an employee or visitor—have pressed essentially the same grievance? When the answer to those questions is yes, a complaint that does not expressly allege the denial of a FAPE is also unlikely to be truly about that subject; after all, in those other situations there is no FAPE obligation and yet the same basic suit could go forward. But when the answer is no, then the complaint probably does concern a FAPE, even if it does not explicitly say so; for the FAPE requirement is all that explains why only a child in the school setting (not an adult in that setting or a child in some other) has a viable claim.

B. Identification

1. Z.B. v. District of Columbia, 888 F.3d 515 (D.C. Cir. 2018): Z.B. is an elementary school student with ADHD. After the diagnosis, the District of Columbia Public Schools system (DCPS) made accommodations for Z.B., including “simplified directions, extra time, and preferential
seating in the classroom to minimize distractions.” Z.B.’s parents subsequently took her to for a psychiatric evaluation. The evaluation revealed several learning disabilities. After receiving the results of the evaluation, DCPS developed an IEP for Z.B. DCPS did not conduct its own evaluation of Z.B. prior to developing the IEP. The plan included one hour per day of specialized math education, 30 minutes a day of specialized written expression education, and one hour per week of behavioral support in addition to the accommodations previously implemented. Shortly after implementing the plan, Z.B.’s parents withdrew her from school and enrolled her in a private school specializing in learning disabilities (Lab School). Five months later and after the start of the subsequent school year, DCPS made its own evaluation to prepare an IEP that would meet Z.B.’s needs. The new plan included several hours of specialized education per month in and outside of the normal classroom and specified that Z.B. would return to public school (Hearst). Z.B.’s parents filed a due process complaint, seeking reimbursement for tuition at Lab School.

The ALJ ruled in favor of DCPS. The district court similarly concluded that the IEPs were sufficient and granted DCPS’s motion for summary judgment. Plaintiffs appealed. The D.C. Circuit considered “whether, in developing the 2014 IEP, DCPS adequately evaluated Z.B.’s particular needs and offered her an IEP tailored to what it knew or reasonably should have known of her disabilities at the time.” The court ultimately affirmed the district court’s ruling on the 2015 IEP and remanded for further fact finding on whether the school district adequately evaluated Z.B.’s needs before drafting the 2014 IEP. The court made clear that a school “may not simply rubber stamp whatever evaluations parents manage to procure, or accept as valid whatever information is already at hand.”

2. L. by and through J.L. v. Clear Creek Indep. Sch. Dist., 695 Fed. Appx. 733 (5th Cir. 2017)(unpublished): D.L. has been diagnosed with various physical and mental disabilities, including pervasive developmental disorder not otherwise specified, depression, attention deficit/hyperactivity disorder, and anxiety. The effect of those ailments on D.L.’s freshman year in high school—2010 to 2011—made him eligible for special education services. The District recognized as much, finding him disabled under the emotional disturbance category. These services were discontinued in April 2012—sophomore year—based on the District’s determination that D.L. was no longer eligible for such services. The District found that D.L. did not continue to meet the disability criteria for emotional disturbance. D.L. accordingly went through junior year without any special education services. Despite this, D.L. earned As in all of his classes, was rarely tardy or absent, and scored average on his college entrance exams.

Things changed during D.L.’s senior year. D.L.'s father repeatedly sent emails to teachers recounting D.L.'s misbehavior at home, his reactions to recent diagnoses, his feeling overwhelmed by mounting work, and his desire to not continue in school. D.L.'s teachers were responsive to these concerns, making accommodations as necessary. The teachers' observations of D.L. stood in stark contrast to the father's reporting. They stated that he was doing great in class and that his peers looked to him for help. Feeling that the District was being unresponsive to D.L.’s needs, D.L.'s father requested a due process hearing challenging the April 2013 determination that special education was not warranted. It further contends that the District's failure to accommodate D.L. caused his problems during senior year. Review by an ALJ and district court found the school to be in compliance with IDEA and that D.L. did not have a qualifying disability. D.L. appealed.
D.L. first contends the District erred by overlooking an outside evaluator's opinions about his disability. The Fifth Circuit found that the evaluator’s opinions were in fact considered, but were outweighed by all the teacher’s testimony about D.L.’s conduct at school. This is because teachers spend more time with students. D.L. next asserts that these considerations, even if generally proper, ought not apply because D.L.'s disability is undetectable to the untrained eye. This, argues D.L., makes teacher observations not particularly instructive in his case. This assertion is not supported by fact or other case law.

D.L. next contends that the District erred in relying exclusively on academic performance. Again, the record does not support this contention. The District also considered D.L.’s 2011 and 2012 full individual evaluations, his March 2013 outside evaluation, and his teacher's observations of his comportment and interpersonal relationships. This was proper. D.L. lastly argues that the District should have looked not only to his present need but also to the possible future consequences of his disability. To that end, D.L. details his difficult senior year, blaming the District's failure to intervene for his shortcomings. But we do not judge a school district's determination in hindsight. Rather, we consider whether there was a present need for special education services. Therefore, the district court’s ruling for the school is affirmed in full.

3. **Avila v. Spokane Sch. Dist. 81, 686 Fed. Appx. 384 (9th Cir. 2017)(unpublished):** The Avilas argue that the District violated the IDEA by failing to assess their child, G.A., for dyslexia and dysgraphia in a 2010 reevaluation of G.A.'s special education needs. If the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, a local educational agency must conduct a reevaluation to determine whether the child is a child with a disability and the educational needs of the child. Washington law requires that students be reevaluated in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

Here, the District broadly assessed G.A. for reading fluency and fine motor skills aimed at detecting writing inefficiencies. It evaluates students for Specific Learning Disabilities as defined under 34 CFR 300.8(10)(i), which includes reading disorders such as dyslexia and writing disabilities. The District reevaluated G.A. by administering a battery of tests, including many of the same tests used by the Avilas' private evaluator in G.A.’s 2012 assessment. The District did assess G.A. in all areas related to [his] suspected disability and therefore did not violate the IDEA in its 2010 reevaluation.

4. **L.J. by and through Hudson v. Pittsburg Unified Sch. Dist., 850 F.3d 996, 999 (9th Cir. 2017):** L.J. has been diagnosed with three serious disorders, including Bipolar Disorder, Oppositional Defiant Disorder (“ODD”), and ADHD. He has been prescribed a cocktail of serious medications for these conditions. L.J. was suspended from school multiple times for disruptive behavior that included kicking and hitting his teachers, throwing rocks, calling teachers and students names, and endangering and physically injuring classmates. L.J. has attempted to kill himself on at least three occasions and has manifested suicidal ideations.
For years, L.J.'s mother has repeatedly requested, to no avail, that the School District find L.J. eligible for special education. The School District has provided many services to L.J., but has never classified L.J. as eligible for special education under the IDEA. During his fourth grade year, L.J. was sent to the office multiple times for physically injuring classmates, disrupting class, and refusing to follow directives. School staff contacted L.J.'s mother to pick him up from school early on numerous occasions. The School District conducted a mental health assessment. He was diagnosed with ADHD. In this assessment, the clinician concluded his ADHD symptoms caused clinically significant impairment in L.J.'s social and academic functioning, that L.J. relied extensively on medications, and further, that he evidenced functional impairments in the areas of family relations, school performance, and peer relations.

The following year, in the fall of 2013, the School District nevertheless placed L.J. in a regular fifth grade classroom without accommodations or services. Next spring, L.J.'s due process request made its way before an Administrative Law Judge (“ALJ”). The ALJ conducted a three-day hearing in April, and on May 23, 2013, the ALJ issued her decision, denying all of L.J.'s requests for relief. The ALJ found that L.J. had no disabilities that would qualify him for special education services, and even if he had qualifying disabilities, he had not demonstrated a need for special services because his academic performance was satisfactory when he was able to attend school. Even if a child has such a disability, he or she does not qualify for special education services if support provided through the regular school program is sufficient. This case differs from most IDEA cases in that L.J. never received an IEP because the School District continually maintained he had no qualifying disabilities. The district court disagreed with the school, but ruled in their favor anyway because L.J. had satisfactory academic performance. The conflict here was whether general education was appropriate or whether L.J. exhibited a need for special education services. Here, L.J. should have been deemed qualified for special education services because he was already receiving those services from the school, which students in general education don’t have access to.

C. Educational Placement

1. *Jusino v. New York City Dept. of Educ.*, 700 Fed. Appx. 25 (2d Cir. 2017)(unpublished): Ann and Ramon Jusino, pro se, sued the New York City Department of Education (DOE) for violation of the IDEA. They claim that the DOE failed to offer their son, W.J., a FAPE by proposing to place him in a single-story school building, which allegedly would not permit W.J. to meet a physical therapy benchmark in his IEP: progress on his ability to climb and descend a flight of stairs.

The Second Circuit found that the district court correctly concluded that single-story school was an adequate placement. The school testified it could implement W.J.'s stair-climbing benchmark by using a stair model or an external set of stairs at a neighboring building. Thus, the court found the DOE had met its burden of demonstrating that the proposed placement would adequately implement the IEP goals.

was not available in his home state of California. Paul was placed in a residential treatment facility in Kansas. According to Paul, however, he requires a residential placement close to his family and the community in which he will live upon exiting special education. Paul claimed that failure to provide the residential treatment facility violated his right to a FAPE.

First, the court ruled that Paul’s IDEA claims were barred by the 90 day statute of limitations after an administrative decision. Second, Paul’s RA and ADA complaints required exhaustion of administrative remedies prior to seeking judicial review. Under the Fry test, Paul’s complaints concern the denial of a FAPE therefore the exhaustion requirements apply.

D. Behavior


Seven-year-old KG had health issues from birth and, as he progressed into a toddler, he showed signs of autism. KG had an Individualized Education Plan (IEP) in place concerning special education services. He also had a Functional Behavior Assessment (FBA), which identified behaviors of concern, including crying, hitting, kicking, and screaming. KG also had a Behavior Intervention Plan (BIP) after he began to act out in school. The “Safety Plan” in the BIP stated, in part, that, when KG’s behaviors escalated, “... students will be removed and furniture will be repositioned to keep [KG] and others safe.” During one of KG’s meltdowns, a teacher dragged KG by his legs across the carpet because KG was flailing next to a heavy desk. This incident left carpet burns on KG’s back. KG’s parents sued the school with claims including discrimination under the ADA and Section 504.

The school sought to dismiss the claims because administrative remedies were not yet exhausted. Under the Fry test, the court disagreed, finding the dispute did not center on a denial of a FAPE, but rather giving notice to the school that they put KG in an unsafe environment. The “gravamen” of the ADA claim is discrimination and creation of a hostile educational environment toward KG because of his disabilities. The “gravamen” of KG’s Section 504 claim is also denial of equal access to services and creation of a hostile educational environment toward KG because of his disability.

E. Procedural Safeguards

1. *J.M. v. Francis Howell Sch. Dist., 850 F.3d 944, 946–47 (8th Cir. 2017)*: In 2011, J.M. began kindergarten in the Francis Howell School District. J.M. qualified for services under the IDEA based on his diagnoses of attention deficit hyperactivity disorder, autism spectrum disorder, anxiety disorder, separation anxiety disorder, panic disorder, Asperger's/autism spectrum disorder, and generalized anxiety. Under the IDEA, J.M. had an Individualized Education Program (IEP). J.M.’s parents allege that between January 2012 and September 2014, J.M. repeatedly was placed in physical restraints and isolation without their knowledge at school. Learning of this, they immediately contacted the school, requesting restraints only when necessary and no isolation. On
September 5, J.M. was removed from the school. J.M. sued for violations of the IDEA, RA, and ADA.

The court dismissed the case because administrative remedies were not yet exhausted. The 8th Circuit found “The IDEA's exhaustion requirement also applies to claims under the Constitution, the ADA, the Rehabilitation Act, and other federal laws protecting children with disabilities to the extent those claims seek relief “that is also available under [the IDEA].” Here, the court determined that the gravamen of the lawsuit revolved around the denial of a FAPE and thus the exhaustion requirement must be met prior to judicial review.

2. **Brittany O. v. Bentonville Sch. Dist., 683 Fed. Appx. 556 (8th Cir. 2017)(unpublished):** Parent sought attorneys' fees from the Bentonville School District as a prevailing party in a state IDEA administrative proceeding. The IDEA itself contains no limitations period for this type of claim, so the district court found that the most analogous state statute of limitations was an Arkansas statute providing that any party aggrieved by the findings and final decision of an officer in an administrative hearing shall have 90 days from the date of the hearing officer's decision to bring a civil action in a court of competent jurisdiction pursuant to the IDEA.

Like the Fifth and Seventh Circuits, the Eighth Circuit concluded that whatever limitations period applies to a prevailing party's court action to recover IDEA attorneys' fees, it did not begin to run until the 90-day period had expired for an aggrieved party to challenge the IDEA administrative decision by filing a complaint in court. Upon expiration of this period, an administrative decision becomes final, and the parties know who the prevailing party is. Thereafter, the parties have an opportunity to agree on the matter of attorneys' fees, and if no agreement is reached, the prevailing party may bring an action in court, within the applicable limitations period, seeking attorneys' fees under the IDEA. Here, the 90-day period for the aggrieved party—the District—to challenge the November 25 hearing officer's decision ended on Sunday, February 23, 2014; therefore Parent's March 5, 2014 IDEA attorneys’ fees complaint was timely filed, even if the applicable limitations period was 90 days.

3. **Dallas Indep. Sch. Dist. v. Woody, 865 F.3d 303 (5th Cir. 2017):** Kelsey Woody was a high-school student with learning disabilities. After being evaluated by a public school district in Los Angeles, her resulting IEP designated general education, which meant a public school, as her proper instructional setting. Later, Kelsey suffered a psychotic break. Her doctors recommended a specialized learning environment with significant support and close monitoring, noting in a September 2012 follow-up that Kelsey was “far too fragile to be placed on a general education campus.” After moving to Dallas and enrolling in private school in September 2013, the Dallas School District scheduled a meeting to discuss and develop a new IEP on November 18, 2013. At the meeting, the District insisted on transferring Kelsey back to public school, where it would provide “temporary special-education services.” It was unclear whether the District offered a FAPE. Kelsey’s parents insisted on keeping her in private school. On May 22. It determined that Kelsey was IDEA-eligible and the District developed an IEP for Kelsey to be implemented at a District high school from April 2014 to April 2015. However, Kelsey was to graduate in May 2014 (a week later!). Kelsey’s parents disagreed with the IEP and began administrative proceedings. The district court eventually ruled in favor of Kelsey, awarding tuition reimbursement for private school.
The District raises three grounds for reversal on appeal. First, its central claim is that the district court created a new category of student under IDEA who is entitled to reimbursement for tuition, namely, a child placed in private school by a parent who has made it clear she will reject any offer of a public-school education. Its closely related second argument is that the district court erred by not recognizing either that Kelsey was a parentally placed private-school student or that her parents categorically rejected FAPE. Finally, the District argues that it did comply with its IDEA obligation to offer FAPE to Kelsey, a parentally placed student in private school.

For the first argument, the Fifth Circuit found that Kelsey's facts seemingly expose a gap in immediate coverage. This may be unfortunate, but IDEA does not impose upon the District an obligation to provide Kelsey an immediate interim FAPE or services of any kind. In other words, the court found nothing under IDEA or any regulations that would activate a duty to provide temporary services on these facts. The court's order cannot be supported based on a requirement of temporary services for transfer students. On the second argument, a public school district is not required to reimburse for special-education expenses if that district “made a free appropriate education available to the child and the parents elected to place the child in such private school or facility.” Here, because Kelsey was placed in private school before the District offered a FAPE, they cannot recover tuition costs. For the third claim, the Fifth Circuit found the District substantially failed to provide a FAPE because it waited until May before they developed an IEP. “Kelsey had completed her coursework and was scheduled to graduate in a week. Placing her in public school for her final week of school would have been nonsensical and potentially devastating.” Thus, reimbursement may be calculated from the date the District should have provided FAPE under the Act—but not earlier. Reimbursement should therefore be awarded from April 24, 2014, when FAPE should have been offered, until the end of the school year.

4. **Utica Community Schools v. Alef, 710 Fed. Appx. 673 (6th Cir. 2017) (unpublished):** In an administrative proceeding where the parents alleged their child did not receive a FAPE, an allegation that the District held secret IEP meeting was made. The District sued the attorney for the parents for making frivolous claims in order to recover attorneys’ fees. Only costs that the defendant would not have incurred but for the frivolous claims may be recovered.

The Sixth Circuit found the allegations were not frivolous. Although the record showed that there was no meeting, administrative mistakes made by the District led the parents to believe the school had changed their child's IEP without their involvement. In addition, because the ALJ struck the offending allegations shortly after they were filed and before the hearing, leaving numerous allegations that were not stricken, the District would be hard-pressed to show that it incurred attorney fees that it would not have incurred but for the stricken allegations. Nor has the school demonstrated that it would not have incurred fees at the administrative hearing but for the attorney’s purportedly spurious arguments at the hearing, when the ALJ took care to limit the issues prior to the hearing.

5. **Ostby v. Manhattan Sch. Dist. No. 114, 851 F.3d 677, 680 (7th Cir. 2017):** The Ostbys' son, Jacob, has been diagnosed with Attention Deficit Hyperactivity Disorder and Disruptive Mood Dysregulation Disorder. As a result of these disorders, he struggles with self-management, behavior regulation and social skills. Consequently, he requires an IEP and has received IEPs since he began attending school. The District recommended that Jacob's placement be changed from the
general education setting to the Social Emotional Learning Foundations program ("SELF program"). Jacob's parents objected to the SELF program placement. The SELF program is a restricted form of education that is not part of a mainstream classroom. Moreover, the SELF program was housed at a different school in a different school district.

When parents object to a new placement and file a due process complaint, a "stay-put" provision maintains the status quo of the child's placement until the complaint has been fully resolved. However, the legal system takes time, so when this the Seventh Circuit heard oral arguments for this case, Jacob was now in the third grade with an IEP that all parties agreed to. Therefore, the court determined the case was moot because there was no longer an injury that a favorable court ruling could address. The court also declined to award attorney’s fees because there was no prevailing party. When a case is rendered moot, a court may no longer determine the merits of the case, thus it is impossible to declare a winner.

6. **I. T. by and through Renee and Floyd T. v. Dept. of Educ., Hawaii, 700 Fed. Appx. 596 (9th Cir. 2017)(unpublished):** I.T. appeals the district court's orders reducing attorney's fees for limited success and reducing counsel's requested hourly rate to $300. I.T.’s success in this case was clearly limited, given that he prevailed on only “one narrow issue”—the lack of speech-language services in two individualized education plans—and obtained only thirteen percent of the relief he requested. A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole. Thus, it was permissible to reduce the costs of attorney’s fees.

The district court was also allowed to reduce counsel's requested hourly rate to $300. The IDEA requires that any fee award be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. Based on a review of recent IDEA cases, $285 was the prevailing rate.

7. **Irvine Unified Sch. Dist. v. K.G., 853 F.3d 1087, 1089 (9th Cir. 2017):** This case originates from a dispute over which California government entity would be responsible for funding the education of K.G., an emotionally disturbed minor from California. K.G. argued that the School District should fund the FAPE. While the entities were disputing in district court and before a judgment was entered, K.G. moved for statutory attorneys' fees under the IDEA, requesting $232,625.00 in fees and $1,286.85 in costs. The district court denied the request for attorneys' fees entirely, holding that K.G. was not a “prevailing party” under IDEA because K.G.'s “victory”—the conclusive determination as to which agency would fund the FAPE—was merely “technical or de minimis.” K.G. later renewed the motion for attorneys’ fees and the court granted an award, mandating that the School District pay $174,803.65 in fees and costs. The school appealed.

Courts have the discretion to award attorneys’ fees to a prevailing party under the IDEA. Plaintiffs may be considered “prevailing parties” for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit. In initiating the IDEA action in California's Office of Administrative Hearings, K.G. requested that “the ALJ deem one of the [three agencies] responsible to provide him FAPE.” K.G.’s prayer was answered in full when the ALJ designated the School District as the responsible agency. The
district court similarly granted K.G.’s requested relief, originally by designating the State as the responsible agency, then by ordering the District to pay the bill following our reversal. K.G. thus achieved the “benefit [he] sought in bringing the suit.” By receiving relief on the merits, K.G. “met that minimum condition for prevailing party status.”

Additionally, the mere fact that K.G. graduated before the final decision does not negate any award of attorneys’ fees. It was the School District that kept the meter running when it filed a complaint in district court. One could not reasonably expect K.G., who was still enrolled in school when the District named the student as a defendant in federal court, to refrain from expending resources as the case progressed. And it would make little sense to render a party wholly ineligible for an award of fees incurred in defending its victory, especially during the period when K.G. was still enrolled.

8. **Jackson v. Chicago Pub. Schs., 70 IDELR 33 (N.D. Ill. 2017):** This case arose because a school district did not hold an eligibility determination meeting within the 60-day timeframe established in the IDEA. The school district made numerous attempts to include a preschooler’s parent in the IEP development process justified its failure to complete the child’s IEP within the state-mandated time frame. The parents failed to attend a meeting that was scheduled within the 60-day period, as well as four subsequent IEP meetings scheduled over the following 10 weeks. The District Court upheld the ALJ’s decision that the parent was not entitled to relief for the delay. The Court acknowledged that the school district took 97 school days to finalize the student’s IEP, meaning that they did not comply with the 60-day time frame. However, the Court found that the delay stemmed from the school district's efforts to include the parent in the IEP process. The Court explained that the district was correct to prioritize parent participation over the state time frame. According to the Court, “[i]t would be inconsistent with [the U.S. Supreme Court’s decision in Winkelman v. Parma] to penalize [the school district] because it was unable to complete the IEP within the 60-day deadline because it went out of its way to include [the parent] in the development of her child’s IEP.” The district developed the IEP without the parent after she failed to attend the fifth meeting it had scheduled to discuss her son’s program.

**Service Animals**

1. **Doucette v. Jacobs, 288 F. Supp. 3d 459 (D. Mass. 2018):** Rachel and Michael Doucette are the parents of a severely disabled child, B.D., who attended the Georgetown Public Schools (“GPS”) from age three until he was able to obtain an out-of-district placement at age six. November 2011, B.D. privately received a specially trained and certified service dog that provided autism assistance service, facilitated guide, search and rescue, and assistance with behavior disruption, anxiety, balance and seizure alerting, all of which were of benefit to B.D. B.D.’s parents allege that the service dog permitted B.D. to develop some independence and confidence and helped him bridge social barriers and that B.D.’s behavior in social situations improved when his service dog was present. Nevertheless, B.D. was not permitted to bring his service dog to school. B.D.’s parents claimed this was a violation of the RA, and made other claims against the school for matters including B.D.’s IEP.

To avoid getting caught in the exhaustion requirement of the IDEA, B.D.’s parents argued they are not alleging the denial of a FAPE, but are only alleging discrimination on the basis of B.D.’s disability. The judge was not persuaded. “This argument is defeated by the allegations of the
complaint, as well as logic.” B.D.’s parents specifically alleged that they “demanded that B.D.’s IEP be amended and that his service dog be added as an accommodation” and that the scho
“denied the Parents' request and refused to amend B.D.'s IEP to include a service dog as an accommodation.” The claims relating to the denial of B.D.’s use of service dog are, in fact, part and parcel of their contentions about the failure of the defendants to provide a FAPE. Moreover, the demand for the use of the service dog is the type of complaint that could appropriately be raised before the BSEA in connection with a challenge to an IEP. Thus, the district court dismissed the complaint because administrative remedies were not yet exhausted.

2. A.R. v. Sch. Admin. Unit #23, 15-CV-152-SM, 2017 WL 4621587 (D.N.H. Oct. 12, 2017): A.R. is a student at Woodsville Elementary School who has been diagnosed with developmental delays, hypotonia, hearing loss, dysphagia, epilepsy, and cortical blindness. A.R., who is non-verbal, suffers from frequent seizures of multiple types (drop, grand mal, temporal lobe). Those seizures impact A.R.'s independent mobility, and he requires significant support to be safe, to be mobile within his classroom and on the school campus, to care for his personal needs, and to communicate those needs to others. A.R. has a service dog named Carina. Carina was trained by 4 Paws for Ability (“4 Paws”) as a multipurpose service animal. Carina alerts for seizures by licking A.R.'s face. While Carina is trained to go through the school day without needing to be walked, eat or relieve herself, she requires a service animal handler during the school day. Because of A.R.'s cognitive, sensory and physical limitations, he is not in a position to act in that capacity. After some initial resistance, the District allows Carina to accompany A.R. at school. However, the District requires that A.R.'s parents provide and pay for a handler to supervise Carina during the school day. Plaintiffs contend that, by refusing to provide and pay for a service dog handler for Carina while A.R. is at school, the District has failed to reasonably accommodate A.R.'s disability.

Several courts have determined that claims involving a school district's refusal to allow a service dog to accompany a student to school do not implicate the IDEA and its administrative scheme. Here, however, plaintiffs are not complaining that the District is discriminating against A.R. on the basis of his disability by refusing him access when accompanied by his service dog. Instead, the crux of plaintiffs' complaint is that the District discriminates against A.R. by refusing to pay for and provide a handler for Carina. So, plaintiffs are not merely asking that the District allow A.R. to be accompanied by his service dog while he is at school. Instead, plaintiffs want the District to hire, train and pay for a handler for Carina.

Under the Fry test, the court found the gravamen of the claim to be based a denial of a FAPE. Here, A.R. alleges that the level of supportive services provided by the District is inadequate, because the District refuses to provide a handler to issue verbal commands to Carina, hold Carina's leash while she is with A.R., and employ Carina in accordance with A.R.'s seizure protocol. The rights claimed by A.R. are unique to a student's effort to obtain an appropriate public education. Therefore, A.R. must meet the exhaustion requirement before seeking judicial review.