F3 Law

What Keeps Administrators Up at Night (And How to Fix It)

Blue Jeans Conference

March 11, 2025
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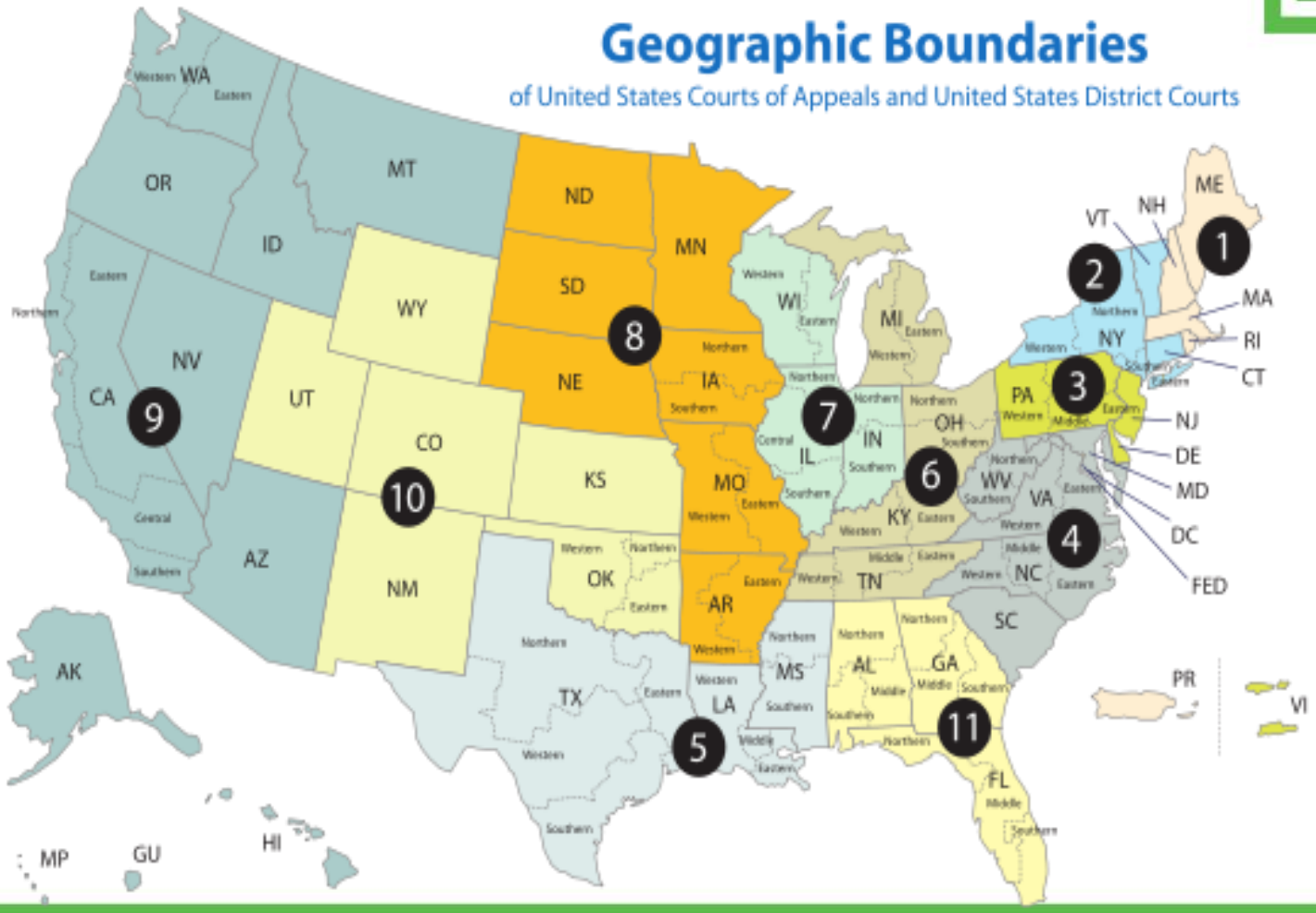
What We'll Cover . . .

- Examples of recent influential decisions from Ninth Circuit illustrating potential problems for special education administrators
  - Organized by topic
- "Why Does This Case Matter" analysis offers pointers for administrators to help avoid losing sleep

The Ninth Circuit

F3 Law

- Alaska
- Arizona
- California
- Hawaii
- Idaho
- Montana
- Nevada
- Oregon
- Washington
- Guam
- Northern Marianas



ADA/Section 504 Claims

Emels v. Shoreline Sch. Dist. (2024)

Facts:

- Following unsuccessful due process claim, Parent of adult student with disabilities sued district, claiming violations of Section 504 and ADA
- Parent claimed that district violated Section 504 by denying student special education services
- Claim also asserted denial of reasonable accommodations in violation of Title II of ADA
- Parent also contended district engaged in illegal retaliation for parent's advocacy on behalf of student
- District court determined that parent failed to assert valid claims under either Section 504 or ADA

Emels v. Shoreline Sch. Dist. (2024)

Decision:

- Ninth Circuit affirmed district court's decision
- Parent refused to consent to district's proposed evaluation, so, as a result, district lacked legal authority to provide services
- ADA claimed failed because parent could not identify programs/services that student could not access because of his disability
- Parent also failed to provide any specific adverse action by district to support retaliation claim

(Emels v. Shoreline Sch. Dist. (9th Cir. 2022, unpublished) 124 LRP 1845)

Emels v. Shoreline Sch. Dist. (2024)

Why Does This Case Matter to Us?

- Generally, parents seeking relief under Section 504 or Title II of ADA must prove intentional discrimination; courts have held that a parent can satisfy this standard by showing bad faith or gross misjudgment on the part of district
- Here, in addition to lack of specificity in parent's claims, district appropriately documented attempts to obtain consent for evaluation and parent's refusal to provide it
- Document! Document! Document!

Smith v. Orcutt Union Sch. Dist. (2022)

Facts:

- 10-year-old student with autism had significant behavior issues at home and school
- Parent obtained home ABA therapy for student and asked district to allow outside ABA therapists to accompany him during the school day, but district denied the request
- Parent sued, claiming that that district violated student's right under Title II of ADA and Section 504 by failing to accommodate his outside ABA therapists and therefore denying him access to an education
- District court dismissed action

Smith v. Orcutt Union Sch. Dist. (2022)

Decision:

- Ninth Circuit affirmed lower court's dismissal
- Parent failed to prove that district denied student services that he needed to enjoy meaningful access to the benefits of a public education
- While student had serious behavioral issues, parent did not offer anything to show how those issues kept him from accessing an education, "and the district court was not required to draw the inference that they did"
- Evidence only discussed value of ABA therapy to children with autism

(Smith v. Orcutt Union Sch. Dist. (9th Cir. 2022, unpublished) 81 IDELR 153)

Smith v. Orcutt Union Sch. Dist. (2022)

Why Does This Case Matter to Us?

- Evidence demonstrating that a specific therapy is medically necessary for a student is not enough to establish that such therapy necessary for the student to access the student's education
- In this case, although student's doctor had prescribed ABA therapy for student's autism, nothing in the record discussed whether such treatment would be of particular use in allowing student to remain in class, engage with the material, or otherwise access his education

Behavior and Behavioral Supports

J.S. v. Eugene Sch. Dist. 4J (2024)

Facts:

- Parent of student with ED and fetal alcohol syndrome claimed that district denied student FAPE by failing to properly implement his behavioral support plan ("BSP")
- After due process decision found in district's favor, parent asserted on appeal to district court that ALJ failed to properly assess credibility of district's witnesses
- Parent's expert witness testified that lack of documentation of the BSP implementation meant that BSP was not implemented
- District court disagreed and ruled in district's favor
- Parent appealed to Ninth Circuit

J.S. v. Eugene Sch. Dist. 4J (2024)

Decision:

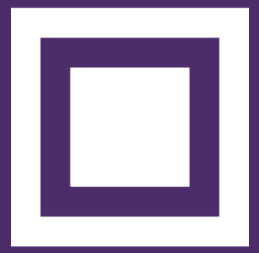
- Ninth Circuit upheld lower court's findings that parent could not overcome district witnesses' testimony that student's BSP was implemented
- Two school administrators testified that BSP was printed and placed in binders at the start of the school year to be used by staff in classroom, although testimony did not establish clear timelines of when binders were provided and how often they were used
- Court: "[Parent] offers no evidence contradicting the District staff's testimony that [student's] BSP was available to staff and teachers, that teachers were observed implementing his BSP in the classroom, and that behavioral consultants shared information about his BSP with other staff members"

(J.S. v. Eugene Sch. Dist. 4J (9th Cir. 2024, unpublished) 124 LRP 38730)

J.S. v. Eugene Sch. Dist. 4J (2024)

Why Does This Case Matter to Us?

- Although court ruled in district's favor in this case, certain missing areas of BSP implementation timelines could have been cause for concern
- Districts should establish processes for ensuring and tracking implementation of behavioral supports
- These can include:
  - Having staff sign and date receipt of BSP and tracking forms
  - Fully complete tracking forms to document supports that were provided



Bullying

Csutoras v. Paradise High Sch. (2021)

Facts:

- Student with ADD received academic accommodations under Section 504, but plan did not contain any social interaction accommodations
- Student was assaulted at football game
- Assaulting student admitted that assault was motivated by student's relationship with another student
- Student claimed ADA and Section 504 violation based on USDOE directives in Dear Colleague letters related to peer-on-peer harassment/bullying on basis of disability

Csutoras v. Paradise High Sch. (2021)

Decision:

- District court and Ninth Circuit rejected student's claim
- Court applied precedential "deliberate indifference" standard (where "the school's response to the harassment or lack thereof was clearly unreasonable in light of the known circumstances")
- District was not on notice of any "obvious" need for social-related accommodation, there had been no prior incidents of bullying/harassment directed at student, and no allegations that district ignored any widespread bullying or harassment of disabled students

(Csutoras v. Paradise High Sch. (9th Cir. 2021) 12 F.4th 960, 79 IDELR 152)

Csutoras v. Paradise High Sch. (2021)

Why Does This Case Matter to Us?

- Courts generally do not accept guidance issued from USDOE as binding authority; instead, they are bound to apply prior judicial precedent
- Here, Ninth Circuit found no evidence that Dear Colleague letters addressing bullying were issued as authoritative or official position of USDOE for purposes of private damages actions

Constitutional Claims

Herrera v. Los Angeles Unif. Sch. Dist. (2021)

Facts:

- Student with autism and asthma attended end-of-year trip to community pool with classmate and school aide
- Aide watched student from designated observation area; saw student exit pool and go to locker room
- Aide waited outside locker room for student to emerge, but student did not change clothes and instead went back to pool
- When aide returned to pool to look for student, lifeguards were trying, unsuccessfully, to resuscitate him
- Parents sued aide and district under Section 1983

Herrera v. Los Angeles Unif. Sch. Dist. (2021)

Decision:

- Ninth Circuit found no liability for constitutional claim of deprivation of familial relationship, as aide's conduct did not amount to deliberate indifference
- Parents provided no evidence that aide knew of immediate threat to student after he watched him enter locker room
- Aide had no "actual knowledge or willful blindness of impending harm"
- Aide was subjectively unaware that student was exposed to dangers of pool "and therefore cannot be liable for his death"

(Herrera v. Los Angeles Unif. Sch. Dist. (9th Cir. 2021) 80 IDELR 2)

Herrera v. Los Angeles Unif. Sch. Dist. (2021)

Why Does This Case Matter to Us?

- Ninth Circuit's ruling points out that if districts and educators can show that injury occurred when they were arguably still protecting the student, deliberate indifference standard for constitutional liability is not met
- Nonetheless, districts should consider need for additional supervision during outings that, by their nature, could place students at some risk

L.F. v. Lake Washington Sch. Dist. #414 (2020)

Facts:

- Parent attended meeting at which district determined Section 504 services were not necessary to address his daughter's anxiety
- Parent then began series of numerous communications with district employees that became increasingly aggressive, making certain staff feel intimidated and bullied
- District imposed "Communication Plan" that limited parent to bi-weekly meetings and advised parent that, apart from these meetings, staff would not respond to further communications
- Parent claimed that "Communication Plan" violated First Amendment

L.F. v. Lake Washington Sch. Dist. #414 (2020)

Decision:

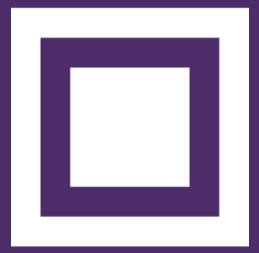
- Ninth Circuit found no constitutional violation
- No violation where government entity ignores (or threatens to ignore) communications from outside specified channels
- "Communication Plan" did not bar parent from contacting school employees; rather, it advised him that staff would no longer respond to substantive communications about his daughter's educational services
- Even assuming "Communication" Plan restricted speech, regulation of expressive activity in non-public forum need only be reasonable

(L.F. v. Lake Washington Sch. Dist. #414 (9th Cir. 2020) 947 F.3d 621, 75 IDELR 239)

L.F. v. Lake Washington Sch. Dist. #414 (2020)

Why Does This Case Matter to Us?

- While districts must ensure that parents have right to participate in their child's education, this case points out that districts may set reasonable limits on such participation in instances where a parent's conduct has become hostile or intimidating toward staff
- Here, although the Communication Plan established certain limitations, it still allowed that parent to meet regularly with district administrators



Eligibility and Evaluations

N.D. v. Reykdal (2024)

Facts:

- IDEA generally requires districts to provide FAPE to all eligible students ages 3 to 21, inclusive, meaning that students can receive services up until their 22nd birthdays
    - Exception to requirement exists for students with disabilities ages 18-21 if state does not offer a "public education" to nondisabled students in that same age group
    - But if state allows adults of any age to earn high school diploma at no cost, any state-established age limits on IDEA eligibility may not be valid
- In Washington, students' FAPE eligibility terminates at end of school year in which they turn 21
    - Washington does not allow nondisabled students to attend public secondary schools after the end of the school year in which they turn 21, but it allows adults of any age to attend one of two public programs designed to help participants earn their high school diplomas
- Class action sought to require FAPE eligibility be extended until 22nd birthday

N.D. v. Reykdal (2024)

Decision:

- Ninth Circuit issued order that temporarily extends IDEA eligibility until 22nd birthday
  - Court explained that GED programs would only be equivalent of secondary school education if students were able to participate free of charge, but, nonetheless, it rejected state's argument that programs' $25 quarterly tuition fee prevented their classification as "free" public education
  - State had granted tuition waivers for "tens of thousands" of GED program participants
- Court: Students were likely to succeed on merits of IDEA complaint and interruption to students' special education services would result in "irreparable harm"
- Court enjoined state ED from terminating students' eligibility at end of school year in which they turn 21 and remanded case for further proceedings on validity of state's age limit for special education

(N.D. v. Reykdal (9th Cir. 2024) 124 LRP 16052)

N.D. v. Reykdal (2024)

Why Does This Case Matter to Us?

- Court stated that if injunction is not granted, students will suffer irreparable harm that could not be remedied by compensatory education
- Conversely, court said that if injunction is granted, hardship that state would suffer is expense of continuing students' education
- "We conclude both that the balance of hardships tips in the students' favor and also that an injunction would be in the public interest"

Crofts v. Issaquah Sch. Dist. No. 411 (2022)

Facts:

- Parents requested evaluation, believing student had dyslexia, based, in part, on independent assessment's conclusions
- District found student eligible under SLD category, with assessment report also citing to parents' assessor's findings
- Parents believed district should have formally evaluated student for dyslexia and that failure to do so violated IDEA requirement to evaluate "in all areas of suspected disability"
- District refused parents' IEE request and filed for due process
- ALJ and district court ruled in district's favor

Crofts v. Issaquah Sch. Dist. No. 411 (2022)

Decision:

- Ninth Circuit upheld district's assessment, finding that it met all legal requirements (also finding that district's IEPs were appropriate)
- District conducted battery of assessments to evaluate student's reading and writing skills areas that dyslexia could impact
- Parents' insistence that district should have evaluated student for dyslexia rather than recognizing her difficulties with reading, writing, and spelling under the broader SLD category was "based on a distinction without a difference"

(Crofts v. Issaquah Sch. Dist. No. 411 (9th Cir. 2022) 80 IDELR 61)

Crofts v. Issaquah Sch. Dist. No. 411 (2022)

Why Does This Case Matter to Us?

- Remember that districts are only required to assess student in particular areas related to suspected disability
- IDEA does not provide parents with right to dictate specific areas that district must assess as part of its comprehensive evaluation
- Of course, if district determines that particular assessment for dyslexia is needed to determine whether student has disability (SLD), then it must conduct such assessment

D.O. v. Escondido Union Sch. Dist. (2023)

Facts:

- Therapist advised district at IEP meeting that she had diagnosed student with autism, which was not previously suspected
- Parent did not deliver therapist's report to IEP team
- Awaiting report, district did not begin assessment plan process for four months
- ALJ: district was justified in waiting to see what tests private therapist used in order to avoid duplication
- District court overturned ALJ: Four-month delay was not reasonable; delay was partially due to staff skepticism of diagnosis

D.O. v. Escondido Union Sch. Dist. (2023)

Decision:

- Ninth Circuit reversed district court, finding no violation of IDEA or California assessment requirements and concluding district's delay was reasonable
- District court's finding that district's "delay was due, at least in part, to skepticism of its staff" was materially incorrect
- District could not appropriately conduct autism assessment of student without reviewing private report and any assessment it conducted without such report might have been invalid
- Even if delay was procedural violation, there was no denial of FAPE as it did not hinder parent participation or deprive student of educational benefit

(D.O. v. Escondido Union Sch. Dist. (9th Cir. 2023) 59 F.4th 394, 82 IDELR 125)

D.O. v. Escondido Union Sch. Dist. (2023)

Why Does This Case Matter to Us?

- Ninth Circuit in this case acknowledged that circumstances might exist where district cannot conduct appropriate evaluation for a specific disability without access to a private assessment report
- Due to test-retest effect, publishers of assessment instruments may restrict how frequently any particular assessment can be re-administered and still be considered valid and reliable
- Here, district's expert testimony to this effect and its carefully documented attempts to obtain private assessment report justified its four-month delay in proposing assessment plan

C.M.E. v. Shoreline Sch. Dist. (2023)

Facts:

- Parent of adult student requested that district evaluate her son for special education
- District sent parent consent form describing proposed initial evaluation, which included review of existing data, academic evaluation, age-appropriate transition assessment, and interview
- Parent sent back consent form with modifications, indicating that she did not consent to initial evaluation because she objected to transition assessment and interview, claiming they were unnecessary
- ALJ and district court agreed with district's request to override parent's refusal to consent

C.M.E. v. Shoreline Sch. Dist. (2023)

Decision:

- Ninth Circuit agreed with ALJ and lower court
- District was legally required to include an age-appropriate transition assessment because student was over age 16
- District also reasonably believed that interviewing student "with questions about his interests, strengths, preferences, and needs" was reasonable method of determining his postsecondary goals
- Parent's objections were based on alleged "traumatic experience" student had in previous interview and district agreed to ensure assessment and interview would be conducted in manner that was comfortable for student

(C.M.E. v. Shoreline Sch. Dist. (9th Cir. 2023, unpublished) 82 IDELR 219)

C.M.E. v. Shoreline Sch. Dist. (2023)

Why Does This Case Matter to Us?

- When districts decide to use IDEA's consent override procedures, they must assemble all necessary staff to testify that each of the proposed assessments are appropriate and necessary
- In this case, district was on firm ground when it asserted that IDEA requires that students' IEPs include "appropriate measurable postsecondary goals based upon age-appropriate transition assessments"
- Student interviews can be, and most often are, important component of transition assessment

Independent Educational Evaluations (IEEs)

L.C. v. Alta Loma Sch. Dist. (2021)

Facts:

- August 10, 2017: District agreed to fund vision therapy IEE for student
- District informed parents that assessor did not meet cost criteria identified in its IEE policy, and repeatedly provided parents with opportunity to petition district to allow exception
- December 5, 2017: District filed for due process hearing after being informed by advocate that parties were at impasse
- ALJ found no unnecessary delay, but district court reversed, finding that district should have advised parents as to amount of excess cost

L.C. v. Alta Loma Sch. Dist. (2021)

Decision:

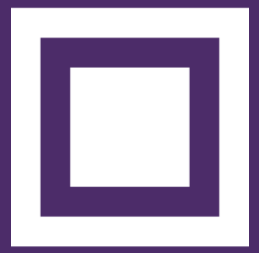
- Ninth Circuit: No legal basis for district court's decision
- Ongoing communication existed between parties from August until December
- Longest delay in communication was during Thanksgiving break
- Impasse reached on November 30; district filed for due process hearing only 5 days later
- No legal authority obligating district to identify any particular information concerning amount of excess cost

(L.C. v. Alta Loma Sch. Dist. (9th Cir. 2021, unpublished) 849 F. App'x 678, 78 IDELR 271)

L.C. v. Alta Loma Sch. Dist. (2021)

Why Does This Case Matter to Us?

- When parent requests IEE at public expense, district must—without unnecessary delay—either file due process complaint or fund IEE
- Here, Ninth Circuit noted that what constitutes "unnecessary delay" is fact-specific inquiry
- "For example, when parties 'continued to discuss provision of an IEE,' there was no unnecessary delay in the school district waiting to file for a due process hearing until the parties reached 'a final impasse.' When a school district's delay is 'unexplained,' however, that weighs in favor of finding unnecessary delay."



Least Restrictive Environment (LRE)

D.R. v. Redondo Beach Unif. Sch. Dist. (2022)

Facts:

- Student with autism spent 75 percent of school day in general classroom with supplementary aides and services
- District believed that, although student made good progress on goals, he required more direct special education instruction
- District proposed SDC placement for 56 percent of school day
- Parents rejected IEP proposals and removed student to private placement
- ALJ and district court upheld district's proposed placement as LRE

D.R. v. Redondo Beach Unif. Sch. Dist. (2022)

Decision:

- Ninth Circuit overturned district court decision
- Case hinged on first factor of Rachel H. test—academic benefits of general classroom placement
- Proper benchmark for assessing whether student received academic benefits from placement in general classroom is not grade-level performance, but rather is whether student made substantial progress toward meeting academic goals established in IEP
- Fact that student receives academic benefits in general classroom as result of supplementary aids and services is irrelevant to analysis required under Rachel H.
- Ninth Circuit, however, denied reimbursement claim because parents privately placed student in even more restrictive setting

(D.R. v. Redondo Beach Unif. Sch. Dist. (9th Cir. 2022) 82 IDELR 77)

D.R. v. Redondo Beach Unif. Sch. Dist. (2022)

Why Does This Case Matter to Us?

- Ninth Circuit noted that even if student might have received greater academic benefits in district's SDC than in general classroom, IDEA's "strong preference" for educating disabled children alongside their nondisabled peers is not overcome by showing that special education placement may be academically superior to placement in general classroom
- "If a child is making substantial progress toward meeting his IEP's academic goals, the fact that he might receive a marginal increase in academic benefits from a more restrictive placement will seldom justify sacrificing the substantial non-academic benefits he derives from being educated in the regular classroom."

Manifestation Determinations

C.A. v. Atascadero Unif. Sch. Dist. (2024)

Facts:

- 16-year-old student eligible as SLI and OHI had needed support of BCBA since middle school and had BIP that addressed physical and verbal aggression, off-task behavior, and elopement.
- In May 2022, student would not return to class after lunch because he was watching construction workers
- Despite aide's attempt to use calming strategies, student allegedly twice pushed case manager against wall and cursed at principal
- MD team decided that Student's conduct was not manifestation of student's disabilities and that district did not fail to implement IEP

C.A. v. Atascadero Unif. Sch. Dist. (2024)

Decision:

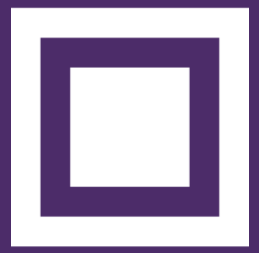
- ALJ determined that student's conduct was not direct result of any failures by district to implement Student's IEP and upheld finding that student's conduct of pushing case manager was not impulsive and that student understood situation
- District court and, subsequently, Ninth Circuit, affirmed ALJ's decision
- Ninth Circuit: "While all IEP team members acknowledged that [student's] disabilities sometimes manifest in difficulties with focus, attention, or compliance, [district] team members distinguished the conduct at issue, which was particularly inappropriate, violent, and targeted"
- Ninth Circuit also denied parent's claim of procedural errors regarding conduct of MDR revies, noting "the robust process before the ALJ, during which the ALJ considered additional evidence and testimony over the course of seven days"

(C.D. v. Atascadero Unif. Sch. Dist. (9th Cir. 2024, unpublished) 124 LRP 11529)

C.A. v. Atascadero Unif. Sch. Dist. (2024)

Why Does This Case Matter to Us?

- Ninth Circuit observed that its review in IDEA cases "is far less deferential than judicial review of other agency actions, but requires this court to refrain from substituting its own notions of educational policy for those of the school authority it reviews"
- Court added that we accord administrative rulings in IDEA cases due weight, with particular deference where the ALJ's findings are "thorough and careful," as was the case here



Offer of FAPE

Los Angeles Unif. Sch. Dist. v. A.O. (2024)

Facts:

- District offered placement to student with bilateral hearing loss in Deaf/Hard of Hearing special day program at its elementary school
- Proposed service included 1350 minutes per week in SDC; 20 minutes of audiology services to be provided between one and five times per month; and 30 minutes of language and speech services to be provided between one and 10 times per week
- Parents rejected district's offer and requested reimbursement for student's attendance at NPS for DHH children

Los Angeles Unif. Sch. Dist. v. A.O. (2024)

Decision:

- Ninth Circuit affirmed ALJ's and district court's reimbursement award
  - Because district used ranges instead of finite numbers in describing frequency of services, Parents were unable to understand FAPE offer
  - "Parents were unable to decide if they agreed with the proposed services without knowing how [District] would provide the services" and "were left without vital information they needed to decide if they agreed with services offered"
  - District's speech and language pathologist and audiologist "provided conflicting understandings regarding how the services were to be provided"
  - Although district court ruled district did not need to specify whether speech and language therapy services would be provided individually or in group setting, Ninth Circuit determined student needed individual speech and language therapy services for FAPE

(Los Angeles Unif. Sch. Dist. v. A.O. (9th Cir. 2024) 124 LRP 5221)

Los Angeles Unif. Sch. Dist. v. A.O. (2024)

Why Does This Case Matter to Us?

- IDEA requires districts to provide parents with a formal, written, and specific offer of FAPE
- This requirement is “enforced rigorously” because it provides clear record if disputes arise and because written offer helps parents decide whether to accept or reject proposed program
- Here, Ninth Circuit agreed with ALJ and district court that district’s proposed program fell short of IDEA requirements because it failed to specify clearly frequency and duration of offered services

Newport-Mesa Unif. Sch. Dist. v. D.A. (2024)

Facts:

- 16-year-old Student eligible as SLI and OHI had needed support of BCBA since middle school and had BIP that addressed physical and verbal aggression, off-task behavior, and elopement.
- In May 2022, Student would not return to class after lunch because he was watching construction workers
- Despite aide's attempt to use calming strategies, Student allegedly twice pushed case manager against wall and cursed at principal
- MD team decided that Student's conduct was not manifestation of Student's disabilities and that District did not fail to implement IEP

Newport-Mesa Unif. Sch. Dist. v. D.A. (2024)

Decision:

- Ninth Circuit upheld district court's denial of reimbursement
  - District's 2017 and 2019 IEPs provided appropriate goals for Student to be involved in and make progress in general education curriculum, contained appropriate services and accommodations in furtherance of its annual goals, and offered appropriate placement in LRE
  - District was not required to conduct an annual IEP review in April 2018, as Parents enrolled Student in private school in January 2018 and did not request an IEP review after that point
  - District sent Parents letter expressly requesting that they notify District if they "would like [District] to hold [Student's] 2018 Annual IEP," and Parents never responded
  - Five-week delay in reassessment did not deny FAPE
  - District was not required to initiate due process hearing under California law after Parents rejected its offered 2019 IEP because Parents consented to no part of 2019 IEP and were seeking completely different program than what District considered sufficient to provide FAPE

(Newport-Mesa Unified School Dist. v. D.A. (9th Cir. 2024, unpublished) 124 LRP 10386)

Newport-Mesa Unif. Sch. Dist. v. D.A. (2024)

Why Does This Case Matter to Us?

- Even assuming the five-week delay in conducting Student's triennial reevaluation resulted in District violating its IDEA obligation to reevaluate special needs children "at least once every 3 years," procedural violation of IDEA denies FAPE only if it "results in the loss of educational opportunity or seriously infringes the parents' opportunity to participate in the IEP formation process"
- In this case, Ninth Circuit stated that there was no indication that five-week delay had either effect

Parent Participation

E.W. v. State of Hawai'i Dep't of Educ. (2024)

Facts:

- Parent of 8-year-old with autism alleged that Hawaii DOE (district) denied FAPE by failing to incorporate student's BIP into his IEP
- Parent claimed that by doing so, district did not have to obtain her input into BIP development
- District fully included parent in all discussions, including those concerning student's behavior
- District court denied parent's claim, finding that district followed all procedural requirements

E.W. v. State of Hawai'i Dep't of Educ. (2024)

Decision:

- Ninth Circuit upheld lower court's decision
- Court agreed that parent had right to participate in discussions about student's behavioral interventions and supports, but rejected claim that parent would only have such right if district fully incorporated BIP into the IEP
- "Student's BIP was developed with his mother's participation and cannot be changed without her knowledge"
- IEP included additional behavioral supports and interventions
- Development of separate BIP did not impede parent's IDEA procedural rights

(E.W. v. State of Hawai'i Dep't of Educ. (9th Cir. 2024, unpublished) 124 LRP 21115)

E.W. v. State of Hawai'i Dep't of Educ. (2024)

Why Does This Case Matter to Us?

- Districts that develop IEPs and BIPs separately should ensure parents understand their right to participate in decision-making process
- To avoid such claims that arose in this case, district should make sure to explain to parents that they have full participation rights in both IEP and BIP development process

Daniels v. Northshore Sch. Dist. (2022)

Facts:

- Parents requested district provide them with physical copies of fourth-grade student's assessment protocols and declined to participate in meetings to determine student's eligibility without such materials
- District denied request, citing copyright concerns
- District declined to hold IEP meeting without parents
- Parents alleged that they needed physical copies of testing protocols to meaningfully participate in eligibility meeting, and also claimed district violated the IDEA by failing to develop student's IEP in their absence
- ALJ and district court denied claims

Daniels v. Northshore Sch. Dist. (2022)

Decision:

- Ninth Circuit agreed that district provided parent with ample opportunities to meaningfully participate in IEP development
- State law did not require districts to provide physical copies of protocols and parents were given ample opportunity to inspect them
- District did not improperly require parent to be present at meeting to establish IEP, as state law required at least one parent to be present during initial determination of eligibility for special education services
- Since parents did not meet with evaluation team to discuss evaluation results, district was not required to move forward with IEP

(Daniels v. Northshore Sch. Dist. (9th Cir. 2022, unpublished) 81 IDELR 154)

Daniels v. Northshore Sch. Dist. (2022)

Why Does This Case Matter to Us?

- Districts must make every effort to include parents in IEP process and thoroughly document those efforts
- Here, district demonstrated that it tried to accommodate parents' requests by offering additional time to review and process testing protocols and data without distraction and making school psychologist available to interpret assessment results
- As a result, parents could not explain how a lack of physical copies prevented them from meaningfully participating in development of student's IEP

Procedural Violations

J.B. v. Kyrene Elem. Sch. Dist. No. 28 (2024)

Facts:

- District refused to hold additional IEP meetings for parentally placed private school Student with multiple disabilities based on parent's refusal to consent to reevaluations and her rejection of district's offer of FAPE through statement of her intent to continue unilateral placement
- District's subsequent PWN only cited student's continued enrollment in private school and stated that district had no obligation to convene IEP meetings for provision of FAPE until student reenrolled in public school
- Parent sought tuition reimbursement

J.B. v. Kyrene Elem. Sch. Dist. No. 28 (2024)

Decision:

- Ninth Circuit rejected reimbursement claim
- Parent's "rejection of [the final] FAPE offer, along with her non-consent to [District's] attempts to reevaluate [student], relieved [district] of any IDEA obligations."
- But invalid explanation provided in district's PWN amounted to procedural violation of IDEA since if student enrolled in private school needs special education and related services, district where student resides is responsible for making FAPE available to student
- Nonetheless, parent's continued resistance to district's efforts to provide student FAPE made error harmless; district had legitimate reasons for its refusal to hold additional IEP meetings for student (failure to consent to reevaluations, statement of intent to continue private placement)

(J.B. v. Kyrene Elem. Sch. Dist. No. 28 (9th Cir. 2024) 124 LRP 30919)

J.B. v. Kyrene Elem. Sch. Dist. No. 28 (2024)

Why Does This Case Matter to Us?

- Under IDEA, student's district of residence is not obligated to continue offering FAPE if parent of privately placed student "makes clear his or her intent" to keep student enrolled in out-of-district private school
- OSEP has clarified that when parents place student in private school and then make it clear that they do not intend to re-enroll student in district, district does not have to continue to offer FAPE
- As district court and ALJ found in case, affirmed by Ninth Circuit, Parent made it clear throughout the fall semester 2013—and particularly on December 19, 2013—that she did not intend to re-enroll student in district

AAA v. Clark County Sch. Dist. (2024)

Facts:

- Parents of second-grade student with a hearing impairment asserted claims under IDEA, ADA Title II and Section 504 alleging that district denied FAPE by failing to timely review and revise student's IEP
- District had decided to hold off on student's annual IEP review until parents received results of IEE
- District also delayed student's annual IEP review by an additional 122 days based on the parents' pending due process complaint
- District court rejected parent's claim as student was making good progress

AAA v. Clark County Sch. Dist. (2024)

Decision:

- Ninth Circuit affirmed lower court's decision
- Court reaffirmed that student made good progress in the general education setting while receiving services under her prior "expired" IEP
- District's decision to prioritize parents' participation over the review deadline while waiting on IEE was not unreasonable; delaying IEP while due process was pending was procedural violation
- Student made "progress appropriate in light of [her] circumstances" and received FAPE despite procedural violation

(AAA v. Clark County Sch. Dist. (9th Cir. 2024, unpublished) 124 LRP 24303)

AAA v. Clark County Sch. Dist. (2024)

Why Does This Case Matter to Us?

- Even though district might fail to comply with IDEA, it will not be liable for procedural violation that does not result in educational harm to student or impede parents' opportunity to participate in the IEP process
- Here, while district conceded that it did not timely revise student's IEP, it successfully showed violation was harmless by presenting testimony that student improved in overcoming her hearing impairment and performed extremely well academically, even earning spot on honor roll

N.F. v. Antioch Unif. Sch. Dist. (2021)

Facts:

- Student with ADHD, anxiety and XYY syndrome was initially suspended prior to winter break, with suspension lasting through holidays
- After break, student was removed for three more days, triggering requirement to hold MD review on January 18 (10 school days from initial removal in December)
- District allegedly provided one day notice to parents of MD review
- District held MD review without parents, found student's conduct to be manifestation of disability and returned student to prior placement

N.F. v. Antioch Unif. Sch. Dist. (2021)

Decision:

- Court rejected parents' claim that district improperly held MD meeting without them
- Parents' "lack of presence in the same room as [district] staff . . . did not deprive parents of any meaningful opportunity to participate in the determination of the basis for student's behavior"
- Even if procedural violation occurred, there was no denial of FAPE because results of meeting permitted student to return to classroom

(N.F. v. Antioch Unif. Sch. Dist. (9th Cir. 2022, unpublished) 81 IDELR 7)

N.F. v. Antioch Unif. Sch. Dist. (2021)

Why Does This Case Matter to Us?

- Districts should always try to secure parental presence and participation at MD meeting; but they also have IDEA responsibility to hold meeting within 10 days of student's removal from educational placement for disciplinary reasons
- What about Ninth Circuit's decision in Doug C. (parent participation trumps meeting procedural deadlines)? Will other courts/ALJs apply Doug C. principles to MD reviews?

Reimbursement Claims

Irvine Unif. Sch. Dist. v. Landers (2023)

Facts:

- District placed eighth-grade student with ADHD in classroom with modified curriculum, with below grade-level standards for math and reading
- District asserted that its modifications to student's curriculum were justified based on her performance in its 2018 assessments
- District responded to parent's concerns by stating that student "did not make as much progress on grade-level standards because she worked on below grade-level, modified curriculum" and advised that parents should "watch her progress by looking at specific goal areas, not by looking at grade-level standards"
- District court ordered reimbursement for unilateral private school placement, finding that district's IEPs failed to provide FAPE

Irvine Unif. Sch. Dist. v. Landers (2023)

Decision:

- Ninth Circuit affirmed reimbursement award
- District presented no reliable evidence that modified curriculum it offered Student in its IEPs meaningfully benefited her
- Student's assessment scores in math and reading dropped following the modifications
- Both expert psychologists credibly testified that student's cognitive level was high enough to participate in general curriculum with her nondisabled peers
- Ninth Circuit: "Moving a student from the general education curriculum to a modified curriculum is a last resort"

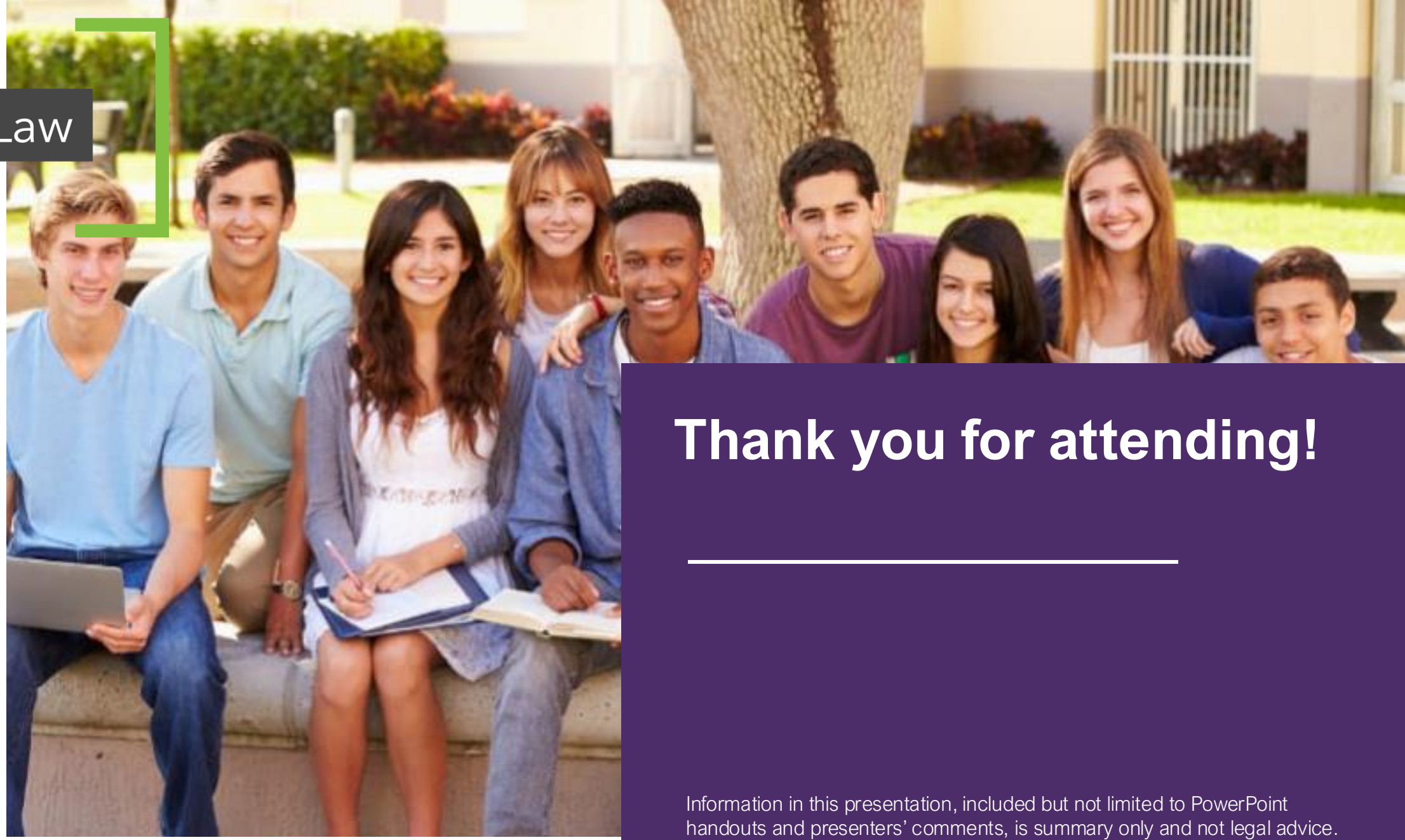
(Irvine Unif. Sch. Dist. v. Landers (9th Cir. 2023, unpublished) 124 LRP 1)

Irvine Unif. Sch. Dist. v. Landers (2023)

Why Does This Case Matter to Us?

- To obtain reimburse for unilateral private school placement, parents must be able to demonstrate that district denied student FAPE and that their unilateral placement was appropriate
- Here, in addition to affirming district court decision that district denied FAPE, Ninth Circuit determined that private placement provide educational instruction specially designed to meet student's unique needs and enables student to obtain meaningful benefit from instruction
  - Student progressed academically and socially at private school, and, although student repeated sixth grade, testimony established testified that it was necessary intervention to allow student to catch up to her peers after her dip in progress while at district

F3 Law



Thank you for attending!

Information in this presentation, included but not limited to PowerPoint handouts and presenters' comments, is summary only and not legal advice. We advise you to consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

F3 Law

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