SPECIAL EDUCATION LEGAL ALERT

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This month's update concerns issues that were subject to recent, unpublished federal court decisions of general significance: (a) liability for money damages under the IDEA, and (b) the reverse effect of general education interventions on IDEA child find and eligibility. For further examination of both of these issues, see Publications section at perryzirkel.com.

In *Doe v. Bedford Central School District* (2019), a federal district court in New York addressed a federal civil rights liability suit against a district and its officials under the IDEA in the wake of a suicide of an eighth grader with an IEP for ADHD, which included a provision requiring "teachers and counselor/psychologist [to] call or email [his] parents, as needed, to notify [them] of any changes in [his] behavior." On the day of the student's suicide, the counselor partially informed the parents of his break-up with his girlfriend but without the specifics, including alarming emails that the girl friend's mother had forwarded to the counselor. The parents filed suit under Section 1983, alternatively connecting it to 14th Amendment substantive due process and the IDEA. The defendants moved for dismissal of the suit.

The court dismissed the Section 1983 substantive due process claim against the counselor and three other named defendants (the superintendent, principal, and school psychologist) due to failure to show required elements of a state-created danger theory—(a) affirmative acts that were (b) conscience-shocking.	This ruling fits with the vast majority of substantive due process claims in the K–12 context, including for most student suicide cases in light of the indirect role of school officials and the high standard for constitutionalizing the regular operations of governmental agencies, including schools.
The court denied the motion to dismiss the Section 1983 IDEA claim, concluding that "[a]lthough monetary damages generally are not available under the IDEA itself, a plaintiff may recover for a violation of the IDEA pursuant to § 1983." The court also characterized the parents' failure-to-implement claim as atypical and for which "a traditional remedy under the IDEA is unavailable, especially given [student's] untimely death." Finally, the court rejected the defendants' qualified immunity defense.	This ruling is highly unusual on a national basis. Almost all jurisdictions have concluded the connecting Section 1983 to the IDEA does not change the unavailability of money damages under this legislation. Moreover, contrary to the court's characterization, failure-to-implement an IEP is not an atypical claim under the IDEA. Finally, qualified immunity applies unless the law is clearly established, which is not even the case for the Second Circuit. The future proceedings in this case bear watching, unless the parties decide to settle.
The unusual fact pattern of this case consists of student suicide in combination with an IEP provision that fits with a duty to warn theory. Will these allegations make a difference for the general unavailability of money damages under the IDEA?	

In *J.N. v. Jefferson County Board of Education* (2019), a federal district court in Alabama addressed the child find claim of an eighth grader with ADHD. In grade 7, her parents informed the school of her diagnosis in connection with her persistent behavioral problems, and she started to have academic difficulties in a few subjects, especially math, whereupon his math teacher provided 1:1 help. In the first half of grade 8, the math teacher referred her to the school's problem-solving team, which provided interventions, but her academic problems continued. In the second half of grade 8, the district conducted a special education evaluation that determined that she was eligible under the IDEA, leading promptly to an IEP. Her parents filed for a due process hearing, which ruled in their favor but declined to award the requested compensatory education relief.	
The court affirmed the child-find ruling in favor of the parents, concluding that the district had reason to conduct the evaluation earlier that the second half of grade 8.	This ruling was not unusual, except that some courts would have concluded instead that the district did not reasonable suspicion until the increasing level of interventions proved ineffective.
The court also affirmed the hearing officer's withholding of compensatory education relief. Pointing out that the burden of persuasion was on the parents, the court concluded that the parents failed to show that the increasing interventions that the school provided were substantively different from the services to which she was entitled as FAPE.	This ruling, like the aforementioned exceptions, shows the other side of the coin of the various forms of general education interventions that are increasingly part of prevailing practice. This ruling would seem to suggest that RTI and MTSS, as extensions of the less systematic interventions of this case, can be double-edged swords. They may not only increase the exposure to child find but also decrease the exposure to compensatory education.
Finally, the court ruled that the parents had not achieved prevailing party status and, thus, were not entitled to attorneys' fees.	As a result, the parents' victory in this case was only in principle, not in principal. They not only failed to obtain relief but also were left with the considerable cost of legal representation to obtain this "win."
Stay tuned for future child find/eligibility cases in terms of the potentially direct effects of general education interventions, particularly RTI and MTSS, and their reverse effects on compensatory education relief. Overall, this decision is the latest in the lengthening line of case law that show the blurry boundaries between general and special education.	