

SPECIAL EDUCATION LEGAL ALERT

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This month's update identifies recent court decisions illustrating the multi-step analysis and equitable nature of tuition reimbursement. These two cases include the issue of transition respectively as an implicit student-specific placement provision and as an explicit age-specific IDEA requirement. For related information about these issues, see the Publications section of perryzirkel.com

In *Doe v. Newton Public Schools* (2021), the federal district court in Massachusetts addressed the tuition reimbursement claims for grades 11 and 12 of a student with autism who had generally performed well academically but had experienced increasing mental health problems culminating in a four-week hospitalization for suicidal ideation in July before grade 11. In response to the district's proposed IEP in August, which called for continued inclusion with approximately 20% in the high school's separate therapeutic program, the parents unilaterally placed him in a residential therapeutic program. For grade 12, the district's proposed IEP was for a therapeutic full-day program. The parents sought reimbursement for the full costs of the unilateral residential program for the two years.

The court ruled that the district's proposed IEP for grade 11 did not sufficiently take into account the student's therapeutic needs based on his recent mental health crisis.

The court relied on the recommendations of the treating clinicians at the summer hospitalization because the school psychologist's evaluation was a year before his mental health crisis.

The court ruled that the private residential placement reasonably addressed the student's mental health needs and that the least restrictive environment (LRE) preference was not the controlling consideration for unilateral placements.

The underlying conclusion was that the standard for unilateral placements is the substantive side of FAPE. Yet, even more implicit was the judgment that the residential, as compared to a day-school, level of the placement was not sufficiently necessary and, thus, not reimbursable.

The court ruled that the district's proposed placement in a day therapeutic program would have been appropriate except that it did not account the disruptive effect for this student to move from residential to day placement.

The court was careful to narrow its decision to the particular circumstances of this student, who was not ready for an immediate change, and the proposed IEP, which did not have any specific provisions for this transition.

The court awarded reimbursement for the tuition, but not the travel and lodging expenses, of the residential placement.

The basis for the court's limited award appeared to be the conclusion that the student needed a therapeutic day placement for the two years in question.

This decision reveals the equitable nature of tuition reimbursement cases, including (a) the multi-step FAPE analysis, with LRE only a potential major consideration for the district's proposed placement, and (b) the possible reduction in the ultimate award in light of the individual circumstances of the child and the reasonableness of both parties' choice.

In *Perkiomen Valley School District v. R.B.* (2021), a federal district court in Pennsylvania addressed the tuition reimbursement claims for the final two years of IDEA services for a student with multiple, including intellectual, disabilities and a long history of medical difficulties. In June 2015, concluding that she was not ready to graduate and needed more vocational and independent living skills, the IEP team proposed continued transition services, including vocational experience in childcare. The parent disagreed, instead enrolling her in the Vocational Independence Program (VIP), which is a residential transition placement on the campus of a university in New Jersey. It included noncredit courses, an internship, counseling, and independent living experience. The parent continued this unilateral placement the following year after rejecting the district’s proposed IEP, which was not sufficiently changed from the one for the previous year. After the parents filed seeking tuition reimbursement, the hearing officer decided that the district’s proposed transition programs were not, and that VIP was, appropriate for the two years at issue. However, based on equitable considerations, the hearing officer did not include 50% of the second year’s tuition and the lodging or travel expenses for both years in the reimbursement order. Both parties appealed.

The court agreed with the hearing officer that the district’s proposed transition program for 2015–2016 was not appropriate.	The primary problem was that the vocational program was limited to one career that the student did not necessarily prefer, and it lacked transportation and independent living skills.
The court also agreed that the district’s proposed program for 2016–17 was not appropriate.	The student’s preference had shifted from childcare, and this program also lacked critical experience in independent living.
The court also agreed that VIP met the substantive standard for appropriateness.	The court cited VIP’s progress toward independent living and the status of the program as primarily transition, not postsecondary, services.
As a matter of the equities, the court disagreed with the 50% reduction for the second year’s tuition.	The court concluded that the parent’s participation in the IEP process and decision to continue VIP were reasonable under the circumstances.
The court also disagreed with the disallowance of residential expenses.	The court concluded that the residential component was necessary and inextricably intertwined with the student’s non-educational needs.
The court partly disagreed with the hearing officer’s rulings that the travel expenses were not reimbursable, splitting between student- and parent-based trips.	Analogous to transportation as a related service to and from school, the trips at the start and end of—not the parent visits during—each semester were reimbursable.
Again, in these relatively high-stakes reimbursement cases, this decision illustrates the latitude for determining (a) the reasonableness of the district’s proposed placement and the parent’s unilateral placement and, if that step is reached, (b) the equities for the scope and amount of this remedy.	