SPECIAL EDUCATION LEGAL ALERT

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This month's update identifies two recent court decisions that address various FAPE issues and remedies for students with dyslexia or behavioral disorders. For related articles, special supplements, and earlier monthly updates, see **perryzirkel.com**.

In *G.D. v. Swampscott Public Schools,* an officially published decision on February 7, 2022, the First Circuit Court of Appeals addressed the tuition reimbursement request of the parents of an eleven-year-old with dyslexia. In 2016–17 (grade 1), the school district conducted an initial evaluation, determining that she was eligible for special education under the classification of specific learning disabilities (SLD). Rejecting the parents' request for a "substantially-separate school" that provided scientifically-based instruction for children with dyslexia, the IEP team proposed for 2017–18 (grade 2) specialized instruction in a language-based classroom for a limited part of each day and inclusion support in the general education classroom for science, social studies, and nonacademic subjects. The parents arranged for a private evaluation during the intervening summer, resulting in diagnoses of double-deficit dyslexia and dysgraphia and a recommendation of a substantially-separate school for students with SLD. In November, in response to the private evaluator's further testing that reportedly did not show statistically significant improvement and his repeated recommendation for placement in a specialized school, the IEP team revised the IEP so that the bulk of the time was in the separate language-based classroom. In March, based on formal and informal assessments, the district reported positive progress. However, disagreeing with this information, the parents provided timely notice of unilateral placement of the child for grade 3 in a private school specializing in students with SLD and soon thereafter filed for a hearing. Characterizing it as a "close case," the hearing officer denied reimbursement. Upon appeal, the federal district court in Massachusetts affirmed. The parents proceeded to the First Circuit.	
The parents argued that the child's "slow gains" did not meet the *Endrew F.* standard for FAPE (a) under her individual circumstances, and (b) based on informal assessments rather than standardized testing.	The First Circuit rejected both claims, concluding that (a) the hearing officer implicitly tied the slow gains to the child's particular circumstances, and (b) parents failed to show how the state's standardized proficiency assessments sufficiently assessed her individual progress.
The parents also claimed that the child's reportedly "swift, significant, and quantifiable" progress at the specialized private school proved that the district's proposed IEP did not meet the *Endrew F.* standard.	Again disagreeing, the First Circuit concluded that the comparison was inappropriate in light of the more mainstreamed context of the district program and the "snapshot approach," which holds the IEP team responsible for what it knew or had reason to know of at the time of its meeting.
This case is another illustration of the latitude in the *Endrew F.* decision, which often but not always causes a severe discrepancy between the parents' interpretation and the court's ultimate ruling (if not resolved at an earlier stage, including via effective collaboration and resolved expectations at the IEP meeting).	

In *Kayla W. v. Chichester School District*, an unofficially published decision on February 18, 2022, a federal district court in Pennsylvania addressed the FAPE issues for an elementary school student who started in the district in grade 5 (2016-17). Having attended a private religious school from kindergarten through grade 4, the student found the transition to public school difficult, as evident in academic and behavioral problems during that school year. In February 2017, her school struggles intensified when her brother contracted leukemia, causing her to live with relatives while her parent stayed with her brother in intensive hospital care. In March 2017, after report cards with failing grades and upon receiving a telephone-call notice of another in a series of out-of-school suspensions, the parent requested an evaluation for special education. Although knowing about her family situation, the school provided the consent form to the student to take home to the parent. The parent did not receive it, and, contrary to the district's protocol for prompt multiple attempts, the school psychologist followed up only with an email two months later without checking its receipt or any further efforts to obtain a reply. In August, the district met with the parent and obtained consent for the special education evaluation. For grade 6 (2017-18), the district arranged for the student's placement in a small alternative class at a regional intermediate unit (IU), which conducted the evaluation. The IU evaluation report in mid-October 2018 concluded that the student was not eligible under either the IDEA or Section 504. The district adopted the report without a multi-disciplinary team meeting or any written notice to the parent. Next, in mid-November, the district disenrolled the student based on non-residency. Forced to move out of the rental property due to infestation and lack of heat, the family members were temporarily homeless; they were living with relatives outside the district while the parent sought housing. The district did not provide the parent with the evaluation report until December. Early the next year, the parent found housing in a neighboring district, which promptly conducted an evaluation, determined the child to be eligible under the IDEA, and provided her with an IEP. After the parent's belated filing, the hearing officer denied the parent's various claims, concluding that the procedural deficiencies did not result in substantive harm due to ineligibility and disenrollment.	
The parent's first challenge was to the district's conduct in obtaining the permission for the requested evaluation.	The court ruled that sending the form "home" with the child when she was not living with the parent and the district's failure to follow its own protocol for follow-up amounted, in light of the parent's care for the child's terminally ill sibling, to procedural errors that substantively impaired the parent's opportunity for meaningful participation.
The parent's next challenge was to the evaluation process that determined the child's ineligibility, including the automatic acceptance of the IU report.	The court ruled that the various procedural violations for the evaluation, including the lack of the required notices and meeting, not only substantively harmed the parents' right to participation but also the child's potential eligibility if the district had not accepted pro forma the IU's evaluation report.
The parent's third challenge was to the denial of the request relief of compensatory education.	Finding that the harmful violations were from the school psychologist's belated direct contact in mid-May until the disenrollment in mid-December, the court awarded the student 84 days of compensatory education after a deduction for the estimated time for reasonable rectification.
The district argued that the first 2 months of this award were beyond the IDEA's 2-year statute of limitations.	The court relied on a Third Circuit Court of Appeals decision that for a violation within the statute of limitations the remedy may extend to the entire duration of the violations, thus not limited to the starting date of the two-year period.
This case illustrates the risks of procedural errors that, with an effective attorney and affirmative court, may be costly for the district.	