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Perry A. Zirkel, Ph.D., J.D., LL.M.[aa1]

JUDICIAL RULINGS FOR TRANSITION SERVICES UNDER THE IDEA: AN UPDATE[a1]

A previous analysis of the court rulings specific to transition services under the Individuals with Disabilities Education Act (IDEA)[1] provided several findings that were not previously available in the legal or special education literature.[2] First, by way of background, the article found that the previous coverage of the case law specific to the IDEA's transition services provisions, which was largely in the special education rather than legal literature, is markedly incomplete and inaccurate.[3] Second, in contrast with the pro-parent case law skew reported in a previous article,[4] the analysis revealed that sixty-two specifically pertinent judicial rulings from 1990, which was when the IDEA first provided for transition service, to the end of 2016, favored school districts by a 3:1 ratio, with the percentage in favor of districts being more pronounced in the federal appellate courts and the more recent rulings.[5] Third, the analysis found a generally increasing trajectory in the frequency of the decisions.[6]

The purpose of this brief article is to provide an update of the frequency, categorization, and outcomes of the judicial rulings from January 1, 2017, which is immediately after the previous analysis ended, to June 30, 2022, which marks a 5.5-year period.[7] The literature during this period remained markedly limited in amount and accuracy. Specifically, in the only article identified in a Boolean search of the special education and legal literatures during ***571** this updating period, Greene and Landmark cited a skewed sample of the previous literature as evidence that "in many instances" the courts ruled in favor of plaintiff parents who claimed that districts denied their children a "free appropriate public education" (FAPE) with regard to the IDEA requirements for transition services.[8] Although failing to differentiate among due process hearings, mediations, and court decisions, Greene and Landmark predicted an increasing frequency of litigation activity as a result of the Supreme Court's refined substantive standard for FAPE under the IDEA.[9] In contrast with the "See You in Court!" slant in the title of the article and the skewed characterization of the court rulings, the focus of the article was a limited survey of California attorneys with regard to mediation and due process hearings.[10] Failing to identify the aforementioned[11] article, they recommended an analysis of court rulings specific to transition services under the IDEA.[12]

Method

The procedure for the collection and selection of the cases was the same as that of the predecessor analysis. In short, the successive steps were as follows: (1) Boolean search of the Westlaw and SpecialedConnection electronic databases using the alternative search terms of "transition services," "transition assessment," and "transition plan" in combination with "Individuals with Disabilities Education Act"; (2) initial selection of those decisions that included a ruling specific to the IDEA provisions for transition services;[13] (3) tracing the decision forward to make sure that the final selection represented the most recent decision with the requisite ruling;[14] and (4) charting the resulting decisions in inverse chronological order.

Results and Discussion

The resulting chart is the following table, which consists of the following columns: (a) the case citation, with those at the federal appeals level in bold font due to their higher and ***572** wider precedential weight;[15] (b)-(d) the FAPE categorization according to the three principal dimensions of FAPE, with the third being failure to implement (FTI) the IEP;[16] (e) the ruling specific to the transition-services issue, with P=in favor of the parent, SD=in favor of the school district, and () for an inconclusive ruling in favor of either, designated party; and (f) clarifying comments. The shading merely differentiates the cases within each of the successive years of the analysis.

573** ***Table: Judicial Rulings Specific to the IDEA's Transition-Services Provisions for Updated 5.5-Year Period

CASE CITATION	PROCED. FAPE	SUBST. FAPE	FTI FAPE	RULING FOR P OR SD	COMMENTS
C.D. v. Sch. Bd. of Fairfax Cnty., 2022 WL 1613006 (Mar. 4, 2022), *adopted*, 81 IDELR ¶ 37 (E.D. Va. 2022)		X		SD	marginal: cursory within holistic application of *Endrew F.*
Moynihan v. W. Chester Area Sch. Dist., 80 IDELR ¶ 216 (E.D. Pa. 2022)		X		SD	*Endrew F.* standard
Leigh Ann. H. v. Riesel Indep. Sch. Dist., 18 F. 4th 788 (5th Cir. 2021)		X		SD	relaxed approach to individualization of transition goals and plan within *Endrew F.* more broadly (citing *Renee J.)*
Joe V. v. Wimberley Indep. Sch. Dist., 2021 WL 3478217 (June 15, 2021), *adopted*, 79 IDELR ¶ 106 (W.D. Tex. 2021)		X		SD	more detailed but still not nuanced (citing *Renee J.*)
Perkiomen Valley Sch. Dist. v. R.B., 533 F. Supp. 3d 233 (E.D. Pa. 2021)		X		P	deference to hearing officer's *Endrew F.* analysis + reliance on P's experts → reimbursement remedy
McLaughlan v. Torrance Unified Sch. Dist., 79 IDELR ¶ 75 (C.D. Cal. 2021)	(X)	(X)		SD	cursory combined analysis--ultimately *Endrew F.* standard
E.G. v. Anchorage Indep. Bd. of Educ., 78 IDELR ¶ 70 (W.D. Ky. 2021)		X		P	detailed and rather rigorous → reimbursement remedy
A.P. v. Pasadena Unified Sch. Dist., 78 IDELR ¶ 139, *further proceedings*, 79 IDELR ¶ 129 (C.D. Cal. 2021)	X			P	failure to provide transition assessment resulted in substantive educational loss to student → partial reimbursement

Kirk v. N.Y.C. Dep't of Educ., 78 IDELR ¶ 25 (N.Y. Sup. Ct. 2020)	X			SD	no proven substantive loss to student
C.D. v. Natick Pub. Schs, 78 IDELR ¶ 10 (D. Mass. 2020)		X		SD	*Endrew F.* as applied to the transition services placement
Downingtown Area Sch. Dist. v. G.W., 77 IDELR ¶ 155 (E.D. Pa. 2020)	X			P	marginal: delayed transition assessment as limited part of larger FAPE denial → limited compensatory education
Butte Sch. Dist. No.1 v. C.S., 817 F. App'x 321 (9th Cir. 2020)	X			SD	harmless goals/assessment violation due to lack of substantive loss to the student
Walsh v. Silver Lake Reg'l Sch. Dist., 2020 WL 767392 (D. Mass. Jan. 21, 2020) (R&R)		X		SD	cursory *Endrew F.* (+ only implicit adoption by district court via joint voluntary dismissal of appeal to 1st Circuit)
del Rosario v. Nashoba Reg'l Sch. Dist, 419 F. Supp. 3d 210 (D. Mass. 2019)	(X)			(P)	marginal: not procedural violation but prelim. injunction for transition assessment at P's site choice
Matthew B. v. Pleasant Valley Sch. Dist., 75 IDELR ¶ 157 (E.D. Pa. 2019)		X		P	*Endrew F.*--repeated mastered goals not sufficiently ambitious → compensatory education
Pangerl v. Peoria Unified Sch. Dist, 780 F. App'x 505 (9th Cir. 2019)		X		SD	*Endrew F.*--snapshot approach justified vague goals
C.D. v. Natick Pub. Schs., 924 F.3d 621 (1st Cir. 2019)		(X)		SD	*Endrew F.*--not requiring a transition plan or particular evaluation method
Candi M. v. Riesel Indep. Sch. Dist., 379 F. Supp. 3d 570 (W.D. Tex. 2019)	X	X		SD	sufficiently measurable transition goals, distinguishing *Gibson* (6th Cir. 2016); holistic substantive approach
Shaw v. District of Columbia, 2019 WL 498731 (Feb. 8, 2019), *adopted*, 2019 WL 935418 (D.D.C. Feb. 26, 2019)		X		SD	detailed but deferential to hearing officer and, implicitly, to school district
Renee J. v. Houston Indep. Sch. Dist., 913 F.3d 523 (5th Cir. 2019)		X		SD	reasonableness approach of *Endrew F.* with due deference to school district
Doe v. Belchertown Pub. Schs, 347 F. Supp. 3d 90 (D. Mass. 2018)	X			SD	no substantive loss to student (though prospective non-prevailing order for more robust and personalized transition plan)
A.L. v. Alamo Heights Indep. Sch. Dist., 73 IDELR ¶ 71 (W.D. Tex. 2018)	(X)			SD	functional vocational assessment ("as appropriate") was not necessary in this case
Rogers v. Hempfield Sch. Dist, 73 IDELR ¶ 7 (E.D. Pa. 2018)		X		SD	framework of *Endrew F.* and 3d Circuit's "undemanding"

					interpretation of IDEA's transition-services requirements
Middleton v. District of Columbia, 312 F. Supp. 3d 113 (D.D.C. 2018)	X	X		SD	detailed but not nuanced
Geniviva v. Hampton Twp. Sch. Dist., 72 IDELR ¶ 57 (W.D. Pa. 2018)		X		SD	detailed but not rigorous analysis within reasonableness framework of *Endrew F.* + LRE consideration
R.B. v. N.Y.C. Dep't of Educ., 689 F. App'x 48 (2d Cir. 2017)	X			SD	harmless error, with *Endrew F.* at step 2
S.G.W. v. Eugene Sch. Dist., 69 IDELR ¶ 181 (D. Or. 2017)	X			P	almost per se, relying on lack of individual tailoring due to difficulty of showing harm in transition services cases → compensatory education

***575** The table reveals various major findings that generally aligned with the analysis of judicial rulings for transition services during the prior period.[17] The partial exception was for the general frequency trend, which moderated from a previous upward trajectory to what appeared to be a plateau for the most recent 5.5-year interval.[18] This mitigation was contrary to Greene and Landmark's *Endrew F.*-based prediction of escalation.[19] The remaining findings are identified and discussed in the sequence of the columns in the table.

First, as shown in the first column, the twenty-seven rulings represented a variety of jurisdictions, led by those in the First, Third, Fifth, and Ninth Circuits, and with approximately one-fifth at the federal appellate level.[20] This distribution was approximately in line with that of overall IDEA litigation.[21]

Second, as shown by columns 2-4 in the table, the predominant FAPE category[22] that these twenty-seven rulings used to analyze the IDEA transition-services claim was substantive FAPE, with procedural FAPE accounting for the limited remainder.[23] Inasmuch as all of these substantive FAPE rulings were in the period after *Endrew F.*, they applied its refined ***576** standard of reasonably calculation of progress appropriate under the circumstances of the individual child.[24] In turn, the procedural FAPE cases followed the two-step harmless-error analysis codified in the IDEA's 2004 amendments.[25] In comparison, although not included in the previous article due to space limitations, the substantive FAPE analysis similarly predominated during the prior period, but--unlike its somewhat surprising absence during this 5.5-year interval--the FTI category accounted for approximately one-tenth of the prior rulings.

The outcomes, or "rulings in favor of P or D," column revealed that the parents were successful in seven (26%) of the twenty-seven rulings, including the one for a preliminary injunction, with the remaining 74% in favor of the school district. This approximately 3:1 ratio in favor of districts aligns quite consistently with the outcomes distribution for the prior period.[26] This pro-district skew was similar for the procedural FAPE and substantive FAPE categories,[27] reflecting the generally relaxed effect of the respective harmless-error analysis[28] and *Endrew F.*[29]

The final, comments column reveals a predominantly cursory or non-nuanced judicial analysis of the transition-services claims, with due deference to the hearing officer and, less explicitly, the school authorities. The exceptions are relatively limited, with a

few unpublished federal district court decisions being relatively rigorous in their analysis of substantive FAPE[30] or, to a lesser extent, procedural FAPE.[31]

In conclusion, this updated analysis reinforces the severe discrepancy between characterizations of the courts' treatment of transition services claims under the IDEA, as ***577** exemplified by the recent "See You in Court!" article,[32] and the successive and comprehensive, empirical analyses of these decisions. Certainly, the lower larger levels of the proverbial litigation iceberg, including settlements and hearing officer decisions, must be taken into consideration, but the judicial precedents that provide the framework for litigation just as certainly do not at all square with the continuing incomplete and inaccurate professional characterizations.

This severe discrepancy warrants not only more proactivity in response to previous, repeated recommendations for the professional literature in special education,[33] but also a concomitant recognition among practitioners and academicians that the reason to foster significant improvement in the formulation and implementation of transition services under the IDEA is the professional norm of best practices and effective parental collaboration, not the hyper-inflated fear of losing litigation. For those who chose to focus on the legal rather than best-practice level of the discrepancy, the appropriate avenues beyond the recommended improvements in professional publications is to seek more rigorous judicial outcomes via (a) more effective lobbying for stricter transition-services standards in the IDEA and corollary state laws and (b) more extensive expert witnessing in future cases.

Footnotes

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aa1 Dr. Zirkel is University Professor Emeritus of Education and Law at Lehigh University, Bethlehem, PA. He is a Past President of the Education Law Association. His website, *perryzirkel.com*, provides a monthly legal update and various downloadable publications.

1 20 U.S.C. §§ 1401-1419 (2018). For the provisions specific to transition services, *see id.* §§ 1401(34) (definition), 1414(d)(1)(A)(i)(VIII) (requiring assessments, goals, and notice by specified age), 1414(d)(6) (requiring IEP meeting upon failure to meet transition objectives). For the limited additions in the IDEA regulations, *see* 34 C.F.R. §§ 300.43(d) (2019) (permitting treatment specially designed instruction or related services), 300.321(b) (specifying transition services participants on the IEP team).

2 Perry A. Zirkel, *An Analysis of the Judicial Rulings for Transition Services under the IDEA*, 41 Career Dev. & Transition Exceptional Individuals 136 (2018).

3 *Id.* at 138-39. For the most recent cited example, *see* Mitchell L. Yell et al., *Providing Transition Services: An Analysis of Law and Policy*, 28 Advances Learning & Behav. Disabilities 63 (2015) (identifying only six court rulings that, with one exception, were in favor of the plaintiff-parents).

4 *Id.*

5 Zirkel, *supra* note 2, at 140-41. The major exception was the Sixth Circuit's unofficially published decision in Gibson v. Forest Hills Local School District Board of Education, 655 F. App'x 423, 337 Educ. L. Rep. 21 (6th Cir. 2016), which adopted a systematic and rigorous, rather than holistic and district-deferential, approach in its ruling in favor of the parents.

6 Zirkel, *supra* note 2, at 140. Although not specifically reported in the article, the number of pertinent final rulings averaged less than one per year from 1990 to 1999, approximately two per year from 2000 to 2009, and approximately five per year from 2010 to 2016.

7 In line with the previous analysis, the scope did not extend to judicial rulings about transition plans for a change from one placement to another independent of the age-based specific transition services requirements of the IDEA. *E.g.*, R.E.B. v. Haw. Dep't of Educ., 770 F. App'x 796, 798, 367 Educ. L. Rep. 129 (9th Cir. 2019) (ruling that the transition plan for moving the child from a private to a public school did not amount to a denial of FAPE).

8 Gary Greene & Leeana Jo Landmark, *See You in Court! How to Avoid IDEA Transition-Related Mediations and Due Process Hearings*, 30 J. Disability Pol'y Stud. 148, 148-49 (2019).

9 *Id.* at 149 (citing Endrew F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 137 S. Ct. 988 (2017)).

10 The only partially acknowledged limitations included a skewed as well as small sample of attorneys in a single state, a limited response rate, and survey items that were clearly questionable in relation to FAPE and outcomes categorization. *Id.* at 150-54. Moreover, contrary to the related framework hypothesis (*supra* text accompanying note 9), the survey items made no distinction between pre- and post-*Endrew F.* activity

11 *Supra* notes 2-6 and accompanying text.

12 Greene & Landmark, *supra* note 8, at 154.

13 The major exclusions were for decisions that (a) mentioned the key search terms only incidentally with specifically identifying an issue and addressing it via a ruling; (b) identified a requisite issue but did not reach it on the merits, instead disposing of it on threshold adjudicative grounds, such as exhaustion or the state of limitations; (c) focused exclusively on a subsequent issue, such as the remedy or attorneys' fees; or (d) addressed "transition" on the merits but with its more generic meaning rather than with its specific meaning of the aforementioned IDEA provisions (*supra* notes 1 and 7).

14 This Shephardizing process eliminated not only a few lower court decisions within the 5.5-year period (*e.g.*, the federal district court decision in 2019 that the 9th Circuit affirmed in *Butte School District No. 1 v. C.S.*) but also one lower court decision within the prior period (the federal district court decision in 2016 that the 2d Circuit reversed in *R.B. v. New York City Department of Education*).

15 The font does not distinguish those cases that are officially reported and that do not have the same binding effect because they are only unofficially reported; however, this differentiation is apparent in whether the citation is in the official reporter (for the cases within this 5.5-year period citing F.3d or F.4th) or the unofficial reporter (F. App'x, which ceased publication at the end of 2021).

16 These three dimensions are (1) procedural, which requires a two-step, harmless-error approach; (2) substantive, which originally required the benefit standard in Board of Education v. Rowley, 458 U.S. 176, 206-07 (1982) and, as of March 22, 2017, requires the progress refinement of the *Rowley* standard in Endrew F. v. Douglas County School District RE-1, 137 S. Ct. 988, 1000 (2017); and (3) FTI, which in majority of jurisdictions follows the materiality approach of Duyn v. Baker School District 5J, 502 F.3d 811, 225 Educ. L. Rep. 136 (9th Cir. 2007). *See, e.g.*, Perry A. Zirkel, *An Adjudicative Checklist for the Four Criteria for FAPE under the IDEA*, 346 Educ. L. Rep. 18 (2017) (providing the analytical test for each of the three principal dimensions of FAPE and an emerging, partially inchoate "capability to implement" dimension). An entry of "(X)" means that the court's categorization of FAPE was only implicit, with the inference based on the court's analytical approach or contextual discussion.

17 Zirkel, *supra* note 2.

18 Although the oscillations continued from year to year, the average during this recent 5.5-year interval was approximately five per year, which is the high level reached for the seven-year segment at the end of the long previous period. *Supra* note 6.

19 *Supra* note 9 and accompanying text.

20 Each of these federal regions accounted for five or, for the Third Circuit, six, decisions, whereas the federal appeals court decisions at the Fifth, and Ninth Circuits (each n=2) and the First and Second Circuits (each n=1).

21 *E.g.*, Zorka Karanxha & Perry A. Zirkel, *Trends in Special Education Case Law: Trends in Frequency and Outcomes of Published Court Decisions 1998-2012*, 27 J. Special Educ. Leadership 55 (Sept. 2014) (finding, *inter alia*, that the leading circuits to be the Second, Third, and Ninth). Differences in scope, which included not only time period but also "published" status, preclude precise comparisons.

22 For these categories, *see supra* note 16.

23 Specifically, including rulings in which the category was inferred, substantive FAPE accounted for eighteen rulings, and procedural FAPE accounting alone for nine rulings and an additional three rulings in combination with the substantive category.

24 *See, e.g.*, Perry A. Zirkel, *The Supreme Court's Decision in Endrew F. v. Douglas County School District RE-1: A Meaningful Raising of the Bar*, 341 Educ. L. Rep. 545 (2017) (reviewing the literature and analyzing the Supreme Court's decision in relation to the prior formulation of the substantive standard in the Court's 1982 decision in *Board of Education v. Rowley*).

25 20 U.S.C. § 1415(f)(3)(E)(ii) (2018) (requiring for denial of FAPE not only a procedural violation but also a resulting substantive loss to the parent or student).

26 *Supra* text accompanying note 5.

27 The slight difference in the proportion of pro-district rulings for procedural FAPE (78%) and substantive FAPE (83%) is likely not statistically significant due to the relatively small n's during this limited period.

28 *See, e.g.*, Perry A. Zirkel & Allyse Hetrick, *Which Procedural Parts of the IEP Process Are the Most Judicially Vulnerable?* 83 Exceptional Child. 219 (2016) (finding a pronounced pro-district effect in the judicial rulings for procedural FAPE as a result of the applicable two-step analysis).

29 *See, e.g.*, John P. Connolly & Lewis M. Wasserman, *Has Endrew F. Improved the Chances of Proving a FAPE Violation under the Individuals with Disabilities Education Act?* 18 J. Articles Support Null Hypothesis 1539 (2021); Perry A. Zirkel, *The Aftermath of Endrew F.: An Outcomes Analysis Two Years Later*, 363 Educ. L. Rep. 1 (2019); William Moran, Note, *The IDEA Demands More: A Review of FAPE Litigation after Endrew F.*, 22 N.Y.U. J. Legal & Pub. Pol'y 495 (2020) (finding a non-significant difference in the outcomes for substantive FAPE under *Endrew F.* as compared with those under *Rowley*).

30 For the leading examples, *see* E.G. v. Anchorage Indep. Bd. of Educ., 78 IDELR ¶ 70 (W.D. Ky. 2021); Matthew B. v. Pleasant Valley Sch. Dist., 75 IDELR ¶ 157 (E.D. Pa. 2019). Neither of these decisions mentioned the Sixth Circuit's prior ruling in *Gibson* (*supra* note 5), but they at least approached its more rigorous approach to transition-services claims.

31 The early decision of S.G.W. v. Eugene Sch. Dist., 69 IDELR ¶ 181 (D. Or. 2017) appears to be largely an outlier, attributable to the Ninth Circuit's eroding strict approach for procedural FAPE. *See, e.g.*, Perry A. Zirkel, *Parental Participation: The Paramount*

Procedural Requirement under the IDEA? 15 Conn. Pub. Int. L.J. 1, 6-11 (2016) (tracing the evolution of the Ninth Circuit's approach to procedural FAPE).

32 *Supra* notes 8-12 and accompanying text.

33 *E.g.*, Zirkel, *supra* note 2, at 143 (including, *inter alia*, collaborative authorship between legal specialists and special education experts and clear differentiation of professional norms or legal advocacy from objective analysis of legal requirements); *see also* Lauren W. Collins & Perry A. Zirkel, *Functional Behavior Assessments and Behavior Intervention Plans: Legal Requirements and Professional Recommendations*, 19 J. Positive Behav. Interventions 180 (2017); Perry A. Zirkel, *Legal Information in Special Education: Accuracy with Transparency*, 28 Exceptionality (2020); Perry A. Zirkel, *Professional Misconceptions of the Supreme Court's Decision in Endrew F.*, 47 Communiqué 12 (June 2019); Perry A. Zirkel, *The Law in the Special Education Literature: A Brief Legal Critique*, 39 Behav. Disorders 102 (2014.

402 WELR 570

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